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Affirmed by a divided Court

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~600~~ 295

SAMUEL ATLEE, APPELLANT,

VS.

THE NORTHWESTERN UNION PACKET COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED OCTOBER 21, 1873.

Affirmed by a divided Court

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1 Pleas in the circuit court of the United States of America for the district of Iowa, at a term thereof begun and holden at the United States court-room in the city of Des Moines, in the State of Iowa and district aforesaid, on the 2nd Monday of May, it being on the 12th day of May, A. D. 1873, before the Hon. John F. Dillon, United States circuit judge for the eighth circuit, and Hon. James M. Love, United States district judge for said district of Iowa.

2

3 Be it remembered that heretofore, to wit, on the tenth day of October, A. D. 1872, the Northwestern Union Packet Company by its attorneys, Messrs. Howell & Rice, filed in the office of the clerk of the United States circuit court for the district of Iowa a transcript of appeal in a certain cause, wherein the Northwestern Union Packet Company was libellant and appellant, and Samuel Atlee was respondent and appellee, which said transcript is in words and figures following, to wit:

4 Please before the district court of the United States, district of Iowa, had at Keokuk, in the southern division, at the September term thereof, A. D. 1872, Hon. James M. Love, judge.

Heretofore a libel in personam, in admiralty, was filed in said court, which in words and figures reads as follows:

United States district court for the district of Iowa, southern division, at Keokuk.

THE NORTHWESTERN UNION PACKET COMPANY, libellant,
vs.
SAMUEL ATLEE, RESPONDENT.

To the hon. judge the United States district court for the district of Iowa:

The libel of the Northwestern Union Packet Company, in a cause of civil and maratime, alleges and propounds as follows, to wit:

1st. That said Northwestern Union Packet Company is a corporation duly organized, incorporated, and existing under the laws of the State of Iowa, carrying on the business of common carriers on the Mississippi River and its tributaries.

5 2. That Samuel Atlee is a citizen of the State of Iowa, and resides in the town of Fort Madison, Lee County, Iowa; that he is engaged in the business of manufacturing lumber, and has been so engaged for several years last past at said place.

3. That heretofore, to wit, on or about the 23d day of April, A. D. 1871, the said Northwestern Union Packet Company was the sole owner of the steamboat Phil Sheridan and of the barge Jack Reaney.

4. That at said date the steamboat Phil Sheridan and the barge Jack Reaney were each vessels of more than twenty tons burthen, to wit, the steamboat Phil Sheridan was of seven hundred twenty-eight & $\frac{46}{100}$ tons burthen, or thereabouts; and the barge Jack Reaney of one hundred and forty-five & $\frac{54}{100}$ tons burthen, or thereabouts.

5. That, on and prior to the 23d day of April, A. D. 1871, both said

barges and said steamboats were enrolled and licensed for the coasting-trade, and were then and heretofore employed in the business of
6 commerce and navigation between ports and places in different States of the United States upon the navigable waters of the Mississippi River.

6. That on the 23d day of April, A. D. 1871, the said steamboat and barge, being tight, staunch, well manned, and provided, were proceeding on a voyage from the port of St. Paul, in the State of Minnesota, to the port of St. Louis, in the State of Missouri; and that, during the said voyage, to wit, about eleven o'clock p. m. of the twenty-third (23) day of April, A. D. 1871, while proceeding upon said voyage, when a short distance below the steamboat landing or wharf at the town of Fort Madison, county of Lee, and State of Iowa, and within the admiralty and maritime jurisdiction of this honorable court, the said barge being in tow of said steamboat, and said steamboat and barge being in the navigable channel of the Mississippi River, ran against a pier or abutment, constructed partly of stone and partly of wood, which pier or abutment crushed into one side of the barge; from and on account of which injuries then and thus received, and despite the utmost
7 exertions of the officers and crew of the said steamboat, the said barge immediately thereafter sank and became a wreck.

7. That said pier or abutment was without any right or authority constructed and placed there by said Samuel Atlee, and was claimed, owned, and maintained by him at the time of the accident.

8. That said accident occurred without any negligence, or want of diligence, or want of skill on the part of the pilot or other officers or owner of said steamboat Phil Sheridan, and was solely on account of the wrongful acts of said Samuel Atlee in constructing and maintaining said pier or abutment within the navigable waters of the Mississippi River.

9. That the pilot then on duty on the steamboat Phil Sheridan had no knowledge or information of the existence of said pier or abutment.

10. That the pier or abutment which caused the accident was and is constructed partly of stone and partly of wood, and is located in the Mississippi River, about one hundred & sixty feet, more or less, from the bluff bank of said river, and on the Iowa side of the same.

11. That said barge was of the value of five thousand dollars,
8 or thereabouts; and that by reason of the wrongful act of said Atlee in thus constructing and maintaining said pier or abutment, and of the collision resulting therefrom, the said Northwestern Union Packet Company hav' sustained damages in the sum of four thousand eight hundred and fifty dollars, or thereabouts, for which reparation is claimed.

12. That, after said accident, to wit, on or about the 24th day of July, 1871, the said Northwestern Union Packet Company sold and conveyed said barge Jack Reaney (she then being in a wrecked condition caused as aforesaid) to W. W. Kinman for the sum of one hundred and fifty ($150) dollars, that being the best price which could be had & obtained for her.

13. That all and singular the premises are true and within the admiralty & maratime jurisdiction of the United States and of this honorable court.

Wherefore the Northwestern Union Packet Company prays that process may issue in due form of law against the said Samuel Atlee, and this honorable court will pronounce for said libellant for the dam-
9 ages aforesaid, and will decree the *the* same to be paid, with costs

and disbursements, and for such other and further relief and redress as to right and justice may appertain and the court is competent to give in the premises.

For the Northwestern Union P'ck. Co.

W'M F. DAVIDSON, *Pres't.*

UNITED STATES, *District of Missouri, ss:*

I, W'm F. Davidson, of the city of St. Louis and State of Missouri, being duly sworn, that I am president of the Northwestern Union Packet Company, the libellant, and one of the officers of said company; that the seal affixed thereto was affixed by authority of said company, and that deponent signed the same as such president by like authority. And deponent further states he has read the above libel, and knows the contents thereof, and that the same are true of his own knowledge, except as to the matter therein stated upon information, and as to those he believes to be true.

W'M F. DAVIDSON.

Sworn to and subscribed before me by W'm F. Davidson, in my presence, on this 18th October, A. D. 1871, as witness my hand and official seal.

10 [SEAL.]

JOSEPH H. CLARK,
Clerk United States District Court,
Eastern Division of Missouri.

(Endorsed:) Filed Oct. 23, 1871. H. K. Love, clerk, by Erie J. Leech, deputy.

Stipulation entered into pursuant to the rules of practise of the court.

Whereas a libel was filed in this court on the 23 day of October, in the year of our Lord one thousand eight hundred and seventy-one, by the Northwestern Union Packet Company, against Samuel Atlee, in a cause of damages, civil and maratime, for the reasons and causes in said libel mentioned, and praying that a monition may issue against the said defendant, and Howell & Rice, of the city of Keokuk, surety, and the said libellant, the parties hereto hereby consenting and agreeing that, in case of default or continuance on the part of the libellant or his surety, execution may issue against their goods, chattels, and lands for
11 the sum of one hundred dollars: Now, therefore, it is hereby stipulated and agreed, for the benefits of whom it may concern, that the stipulators undersigned shall be and are bound in the sum of one hundred dollars, conditioned that the libellant above named shall pay all such costs as shall be awarded against him by this court, or, in case of appeal, by the appellate court.

Northwestern Union Packet Company.

By HOWELL & RICE,
Their Att'ys.

HOWELL & RICE,
Sureties.

Taken and acknowledged this 23 day of October, 1871, before me.

H. K. LOVE, *Clerk,*
By ERIE J. LEECH, *Dep't.*

(Endorsed:) Filed Oct. 23d, 1871. H. K. Love, clerk, by Erie J. Leech, deputy.

On the same day, to wit, Oct. 23, 1871, a monition was issued in this cause, which, with the return of service on the same, reads in words and figures following:

The President of the United States of America to the marshal
12 of the southern district of Iowa, greeting:

Whereas a libel has been filed in the district court of the United States of America for the southern district of Iowa, on the 23d day of October, in the year of our Lord one thousand eight hundred and seventy-one, by the Northwestern Union Packet Company, against Samuel Atlee, in a certain action, civil and maratime, for damages therein alleged to be due the said libellant, amounting to four thousand eight hundred and fifty dollars, and praying that a monition may issue against the said defendant, pursuant to the rules and practices of this court:

Now, therefore, we do hereby empower, and strictly charge and command you, the said marshal, that you cite and admonish the said defendant, if he should be found in your district, that he be and appear before the said district court on the 1st Tuesday of November, 1871, at eleven o'clock in the forenoon, at the United States court-room, in the city of Keokuk, Iowa, then and there to answer the said libel, and to
13 make his allegations in that behalf, and have you then and there this writ, with your return.

Witness the honorable James M. Love, judge of said court, this 23d day of October, one thousant eight hundred and seventy-one, with the seal of said court affixed.

[SEAL.]

H. K. LOVE, *Clerk*,
By ERIE J. LEECH, *Dep.*

HOWELL & RICE,
Proctors.

I hereby appoint Andrew Brown special deputy United States marshal to serve the within writ, this 23d day of Oct., 1871.

PETER MELENDY,
United States Marshal.

This writ came into my hands Oct. 23, 1871. I served the same on the within-named defendants, at F't Madison, Lee County, on the 24th day of Oct., 1871.

Fees, $5.60.

ANDREW BROWN,
Special Deputy Marshal.

(Endorsed:) Filed October 25th, 1871. H. K. Love, clerk, by Erie J. Leech, deputy.

Answer.

Afterwards, to wit, November 7, 1871, an answer was filed in this cause in the clerk's office, which reads in words and figures following, to wit:

14 District court of the United States, district of Iowa, southern division, at Keokuk. In admiralty.

THE NORTHWESTERN UNION PACKET COMpany, libellant,
vs.
SAMUEL ATLEE, RESPONDENT.

And now comes said Samuel J. Atlee, sued by the name of Samuel

Atlee, and, for answer to the libel of said Northwestern Union Packet Company against him, doth allege and propound as follows:

First. This respondent admits the existence of a company of the name of the Northwestern Union Packet Company, being engaged in the business of common carrier on the Mississippi River, but whether said company is a corporation, and, if a corporation, has been organized as such under the laws of the State of Iowa, respondent has no knowledge or information thereof sufficient to form a belief, and demands proof.

Second. Respondent admits that he is a citizen of the State of Iowa, and resides in the town of Fort Madison, Lee County, Iowa, and that he is engaged in the business of manufacturing lumber, and has
15 been so engaged for several years last past at said place.

Third. This respondent has no knowledge or sufficient information to form a belief whether, on or about the 23d day of April, A. D. 1871, the said Northwestern Union Packet Company was or was not the sole owner of the steamboat Phil Sheridan, and of the barge Jack Reaney, and he cannot therefore admit the same, but he demands proof.

Fourth. Respondent admits that said steamboat and barge were each vessel of more than twenty tons burthen, but of the true tonnage of said vessels he has no knowledge or sufficient information to form a belief; and, if the true tonnage of said vessels is material, demands proof.

Fifth. Respondent has no knowledge or sufficient information to form a belief whether, on and prior to the 23d day of April, A. D. 1871, both said barge and steamboat were or were not enrolled and licensed for the coasting-trade; but respondent admits said steamboat and barge were, at or about said time, employed in business of commerce
16 and navigation on the waters of the Mississippi River, and, if it be material to the issues in this case that said vessels should have been enrolled and licensed, respondent demands proof.

Sixth. Respondent has no knowledge nor information sufficient to form a belief whether, on the 23d day of April, 1871, said steamboat and barge were or were not tight and staunch and well provided, and demands proof; nor has respondent knowledge or sufficient information to form a belief whether said vessels, at the time aforesaid, were or were not prosecuting a voyage from St. Paul, in Minnesota, to the port of St. Louis, in the State of Missouri. But respondent admits that, on or about said 23d day of April, 1871, said steamboat and barge were proceeding on a voyage down the Mississippi River, and that, a short distance, being three-quarters of a mile or thereabouts, below the steamboat-landing, at the town of F't Madison, county of Lee, and State of Iowa, said barge being in tow of said steamboat, was run against a pier or abutment, constructed partly of wood and partly of stone, and
17 received injuries from such collision which caused it to sink and suffer more or less damage.

Respondent denies that at the time of said colliding of said barge against said pier said barge and steamboat were in the navigable channel of the Mississippi River. And on the contrary, respondent avers that where said piers stood at the time of said collision, and stands yet, is outside of the navigable channel of the Mississippi River, and between said channel and the Iowa shore of said river. Whether the officers and crew of said steamboat did or did not use their utmost exertions to save said barge from sinking respondent does not know, nor has he sufficient information to form a belief, and cannot therefore admit the same, but demands proof.

Seventh. Respondent denies that said pier was without any right or authority constructed and placed there by respondent; but he admits that he had said pier constructed and placed where it stands, and that he claimed to own the same, and was the owner of the same when said accident occurred. Respondent shows, and so avers the truth to be, that said pier does in no respect impede or interfere with the
18 usual and common channel of the Mississippi River; that the channel of the river is a considerable distance on the outside of said pier toward the south or Illinois side of the river; that within about four hundred feet of said pier, up the river from it, is a sand-bar at the mouth of a creek, which extends into the river over three hundred feet, and which bar at a low stage of water in the Mississippi River is entirely bare and is several feet above the water. That at an ordinary stage of water said bar prevents steamboats descending the river from reaching said pier at all, unless they leave the channel and passing round the point of said bar run in on a short turn towards the Iowa shore, in the direction of said pier.

Respondent shows that he is the owner of the land on the Iowa shore, fronting on the river where said pier stands, and for a considerable distance both up and down along said river from said pier; that he has several large saw-mill establishments standing on said ground contiguous to said pier; that his saw-logs are obtained from tributaries far up on the Mississippi River, and are floated down *their* tribu-
19 taries into the Mississippi, and thence down the Mississippi to the said mills of respondent. That in carrying on said mills respondent gives employment to eighty-five men on an average all the year round, who would be thrown out of his employment if said mills were stopped; that some of the rafts of logs received by respondent *and* of extensive dimensions, and cannot be safely moored by his mills without the assistance of a boom; that rafting is usually done at certain seasons of the year when the river is at a high stage and favors its safety, and it very often occurs that several rafts of logs for respondent's mills will arrive about the same time, and unless he had a boom he could not anchor and safely protect them against the winds and the waves occasioned by passing steamers; that for the purpose of enabling to protect said logs and carry on his saw-mill business—a business in which society at large is deeply interested as well as respondent—he found it necessary to construct a boom to retain these logs in front of his said mill premises; and that to construct said boom, it was necessary
20 to build said piers against which the saw logs or rafts could rest, and against which the boom-timbers could be placed; that he erected said pier about twenty months ago, and has been using it ever since then as a protection for his said saw-logs and as a part of said boom arrangement. And respondent claims that he did not wrongfully but had the right to construct, and has the right to maintain, said pier in its present condition for the purpose of protecting his lumber as aforesaid is shown, especially as said pier is not in the channel of the river, and is immediately in front of the land of respondent's.

8. Respondent denies that said accident occurred to said barge without any negligence or want of diligence or want of skill, on the part of the pilot or other officers as owner of said steamboat Phil Sheridan; and respondent avers and charges that said accident did occur through the negligence or want of skill and diligence of the pilot or others, officer or officers in charge of said steamboat. And defendant denies that his act of constructing said pier was wrongful, or that said accident necessarily resulted from the location of said pier.

21 9. Of the allegation in said libel that the pilot of the Phil Sheridan, on duty when the said accident occurred, had no knowledge or information of the existence of said pier, respondent has no knowledge nor information sufficient to form a belief, and does not admit that allegation of said libel, but demands proof such ignorance. And respondent avers and charges that if said pilot did not know of such pier, he was not competent to navigate a vessel on the Mississippi River in the vicinity of respondent's mills, as said pier was and is so high and elevated that it can be and is readily seen from the river for a distance of two or more miles down stream or below it, and for three miles or more up stream or about it, and was, at the time of said accident, known to all good pilots and river-men on the Upper Mississippi River or navigating the Mississippi above the shore or rapids.

10. Respondent admits, as he has heretofore admitted, that said pier is constructed partly of wood and partly of stone, and he also admits that it is located in the Mississippi River sixty feet or perhaps more from the bank of said river, on the Iowa side of the same. But
22 respondent avers, as he has before averred, that said pier is no obstruction to navigation in the usual and ordinary channel of navigation in said river.

11. Respondent denies that said barge was of the value of five thousand or thereabouts when said accident occurred, and he denies that it was worth over fifteen hundred dollars when said accident occurred, and he denies that putting said pier where it is was wrongful, and he denies that said pier was the cause of said accident, and avers the cause of the accident was the negligence or incompetency of the pilot or other officer or officers of the steamer Phil Sheridan. And as to the allegations of said libel that because of such collision the said libellant has suffered damages to the amount of four thousand eight hundred and fifty dollars or thereabouts, defendant, for answer, avers that if such damages were suffered, which he does not admit but expressly denies, yet such damages was not the legitimate consequence of said accident, because where said barge sunk the water was shal-
23 low, and not over four feet deep, or thereabouts, and it was near the shore, and the water was shallow between said barge and the shore, and the shore was gravelly and easy of access, and said barge could readily have been raised and repaired at an expense or cost not to exceed seven hundred dollars or thereabouts. And respondent avers that at the present time the place where said barge sank is dry ground, and has been dry ground all the past fall and summer.

12. Respondent has no knowledge of what libellant sold said barge for, except so far as he finds it stated in said libel, and he does not admit that said barge was sold at all, but denies such alleged sale; but he avers and claims that if said boat was worth even half of what libellant alleges it was worth before said injury, that it was of the same value after said injury, except what it would have cost libellant to have raised it and repaired it and have put it in as good a condition as it was before said injury. And respondent avers and claims that if this honorable court shall pronounce against him and hold him liable on
24 account of said accident, that the rule of damages to be assessed against respondent should not be based on the value of the barge before its said accident, compared with what it was sold for to said Kinman, (if it was sold to him at all, which respondent denies,) but on the same amount it would have cost to have raised and have said barge repaired to as good a condition as it was in before said accident.

13. Respondent denies that all and singular of the premises of said

libel are true; he denies that any of them are true so far as they seek or aim to make him liable, or respond in damages for said accident, but he admits the allegations of said libel make a case with the admiralty and maratime jurisdiction of this court.

Wherefore respondent prays that this hon, court would be pleased to pronounce against the libel aforesaid and to condemn the libellant in costs, and otherwise rights and justice to administer in the premises.

Nov. 6, 1871.

McCRARY, MILLER & McCRARY,
Att'ys for Respondent.

25 UNITED STATES OF AMERICA,
District of Iowa, ss:

I, Samuel Atlee, of the city of Fort Madison, county of Lee and State of Iowa, being duly sworn, on my oath say I am the respondent in the foregoing suit; that the foregoing answer has been read to me, and I know the contents thereof, and that the several statements therein are true as I verily believe.

S. J. ATLEE.

Subscribed and sworn to before me, by said Samuel Atlee, this 7th day of November, 1871, as witness my hand & official seal the day and year last aforesaid.

H. K. LOVE, *Clerk.*
By ERIE J. LEECH, *Deputy.*

(Endorsed:) Filed Nov. 7, 1871. H. K. Love, clerk, by Erie J. Leech, deputy.

Afterwards, to wit, at the March term, A. D. 1872, of said United States district court aforesaid, a record entry was made in this cause, which reads as follows:

26 WEDNESDAY, *March* 20, 1872.

NORTHWESTERN UNION PACKET COMPANY
vs.
SAMUEL ATLEE. } 222. Admiralty.

This cause is continued as per stipulation filed; Howell & Rice, attorneys for plaintiff; McCrary, Miller and McCrary, attorneys for defendant.

The clerk here states that the stipulation referred to in above entry has not been found, and a copy cannot be sent up, but as both parties accept the above record entry, it probably makes very little difference, if any.

Afterwards, to wit, on vacation, a paper was filed herein, which reads as follows:

United States district court Iowa, southern division.

NORTHWESTERN UNION PACKET COMPANY,
libellant,
vs.
SAMUEL ATLEE, DEF'T. } Libel proceeding.

Leave is hereby given to libellant in above-named suit to file the
27 attached amended libel, and ordered a copy be delivered to McCrary, Miller & McCrary, att'ys for defendants, when same is filed

J. M. LOVE,
District Judge.

The following is a copy of the amended libel referred to above:

Amended libel.

United States district court for the district of Iowa, southern division, at Keokuk.

NORTHWESTERN UNION PACKET CO., LIBELLANT,
vs.
SAMUEL ATLEE, RESPONDENT.

To the hon. judge of the United States district court for the district of Iowa.

And now comes the Northwestern Union Packet Company, libellant in the above-named cause, and by leave of court files this its amended libel.

1. In addition to the matters and things set up in the original libel, that when the barge Jack Reaney collided with or was run up on the pier named and referred to in the original libel, she had a cargo
28 box deck or covering over said barge; had a good tight floor inside of said barge with a tight inside lining, and hog-chains running over deck from stem to stern, and was in good order and complete sea-worthy condition for carrying bulk grain, for which she was especially intended.

2. That by reason of the collision aforesaid, said barge had said hog-chain broken, twisted, and torn out; that she had her cargo box-covering removed and destroyed; the floor of said barge torn up and destroyed, and a very great part of the side and bottom of said barge on the starboard crushed in, broken, and torn away, and the vessel was thus made a complete wreck.

3. That besides the parts of said vessel thus broken, torn up, and crushed, all other parts of said barge then and thereby were so injured, sprung, cracked, or weakened as that said barge never could have been repaired so as to have been made as good, strong, staunch, sea-worthy, and valuable as she was before said collision.

29 4. Libellant further states that at the time of the collision said barge was loaded with a cargo of grain and other property, consigned to St. Louis; the freight of which and the boat amounted about the sum of eleven hundred and two doll's, which freight belonged to said libellant, and to which libellant would have been entitled on the completion of the voyage, and which voyage could have been completed within twenty-four hours from the time of the said collision.

5. Libellant states that by reason of the said collision, and the almost immediate sinking of said barge thereafter, a large part of said cargo was lost or so injured as to destroy libellant's right of action for freights therein, and that libellant lost about the sum of three hundred and eighty-one dollars from the entire freight-list of said barge on the voyage.

6. Libellant states that by reason the extent and character of the injuries sustained by said barge Jack Reaney as aforesaid, she
30 could not be removed from the spot near said pier when she finally sunk in her disabled condition, and also that she could not have been repaired at that place until the water had fallen several feet and enough to let the barge, or a large part thereof, rest on the ground.

7. That the water did not fall enough to permit repairs to be made

upon said barge until on or about the 24th day of July, 1871, or about ninety days after she was wrecked.

8. That it would have taken about thirty-seven days after that date to have put upon said barge all the repairs which could have been put upon her towards making said barge as good as she was before said collision.

9. That it did take said Kinnear, as libellant is informed, about thirty days to make the repairs he put upon said barge after he bought her, but he did not replace the cargo-box (or covering) nor the grain-floor in bottom of the barge, nor the hog-chains, nor attempt to fit
31 her up as a bulk-grain barge, such as she was before the collision, and that the repairs which were put upon said barge by said Kinnear cost about the sum of nine hundred dollars, ($900.)

10. Libellant states that no amount of repairs short of an almost complete reconstruction of said barge could have made her as and as good as she was before the said collision.

11. Libellant states said barge would have commanded, under a charter-party, and the use thereof would have been worth, about ten dollars per day for the one hundred and twenty-seven days next ensuing after the said collision, the barge remaining as she was before the said collision.

12. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States, an' of *of* this court.

Whereupon libellant prays this honorable court will pronounce for libellant for the damages it has sustained, and will decree same
32 to be paid, to wit, the sum stated in the original libel, with costs and disbursements, and for such other and general and special relief and redress as to right and justice may appertain and the court is competent to give in the premises.

Northwestern Union Packet Company,
[SEAL.] By W'M F. DAVIDSON,
President.

UNITED STATES OF AMERICA,
District of Missouri, ss :

I, William F. Davidson, of the city of St. Louis and State of Missouri, being first duly sworn, state: I am president of the Northwestern Union Packet Company, the libellant, and one of the officers of said company; that the seal affixed to the amended libel above was affixed by authority of said company, and that deponent signed the same as such president by like authority.

And deponent further states he has read the above-amended libel, and knows the contents thereof, and that the same are true of his own knowledge, except as to the matters therein stated upon infor-
33 mation, and as to them he believes to be true.

W'M F. DAVIDSON, *Pres't.*

Sworn and subscribed before me by William F. Davidson, president, in my presence, on this fifteenth July, A. D. 1872.

Witness my hand and my official seal.
[SEAL.] RICH'D H. SPENCER,
Notary Public, St. Louis Co., Mo.

(Endorsed:) Filed July 24, 1872. H. K. Love, clerk, by Erie J. Leech, deputy.

Afterwards, to wit, on the 21st day of August, A. D. 1872, a record entry was made in this cause, which reads in words and figures as follows:

NORTHWESTERN UNION PACKET CO., PL'FF., vs. SAMUEL ATLEE. } In admiralty.

By consent of parties to the above-named suit it is hereby ordered by the court that J. L. Rice is hereby appointed to take down in writing and report any further testimony desired to be taken by either
34 party, at Keokuk, and Daniel F. Miller, jr., is hereby appointed to take down and report any further testimony desired to be taken by either party at Fort Madison, and said testimony to used on trial of said cause so far as competent. Either party shall have right to take any further testimony by depositions by commission when allowed by law.

It is further ordered that this cause shall be set down for hearing at 2 p. m. on the first day of the next term of this court, to be held on the 17 Sept., 1872.

Aug. 21, '72.

J. M. LOVE, *Judge.*

Afterwards, to wit, on the 22 day of August, 1872, an answer to amended libel was filed in this cause, which reads in words following:

Answer.

NORTHWESTERN UNION PACKET COMPANY, libellant, vs. SAMUEL ATLEE, RESPONDENT.

Respondent, for answer to the first article of said amended libel, to the purport that said barge Jack Reaney, at the time she collided, had
35 a cargo box deck or covering on said barge, had a grove tight floor inside of said barge, with a tight inside lining, and hog-chains over deck from stem to stern, and was in good order and seaworthy condition, &c., answering, says, that this respondent has no knowledge, information, or belief in regard to the same, and demands that libellant's said allegation shall be proved.

For answer to the second article of said amended libel, respondent denies that said barge was so injured, sprung, cracked, and injured that she could not have been repaired so as to be as good as she was before her injury; and respondent alleges said barge was injured in a trifling degree, and, for less than eight hundred dollars, judiciously expended, could have been repaired and made better than immediately before her injury.

And for answer to the fourth article of said amended libel, respondent admits that said barge had some cargo or portions of a cargo of grain or other property on her at the time of said collision, but he has no knowledge, information, or belief of the value of the freight
36 thereon, and demands proof; but he denies it was of the value of $1,100.00, or anything near that amount; and whether libellant could have completed the voyage to St. Louis within 24 hours, respondent has no knowledge, information, or belief, and requires proof.

And respondent alleges that, so far as freight is concerned, the measure of damages is not what libellant might have earned if he had got the cargo safely into St. Louis, but what was value when the accident occurred.

For answer to the 5th article of said amended libel, respondent denies that a large part of said cargo was lost or so injured as to destroy libellant's right of action for freight thereon; but he admits some small portion of the cargo might have been more or less injured, and he denies libellant lost $3,000 because of any such loss or injury.

For answer to the 6th article of said amended libel, respondent avers said barge could have been removed immediately after her said injury, and repaired at a small expense, if libellant had seen proper to remove her; or she could have been immediately hauled out and re-
37 paired near where she was injured, if libellant had seen proper so to do with her.

For answer to the 7th article of said amended libel, respondent alleges that libellant could have had said barge repaired near the place where she was injured, and could have had her hauled out there and repaired within a couple of weeks after the collision, or could have had her removed to Montrose, where is a boat-yard, and had her repaired there within 2 or three weeks after the collision, had libellant so been disposed to do; and respondent denies that the stage of the water prevented such speedy repair or delayed the repairs until in July, 1871.

For answer to the 8th article of said amended libel, respondent denies that it would have taken thirty-seven days in repairs towards making said barge as good as she was before said collision.

For answer to the 9th article of said amended libel, respondent says he has no knowledge, information, or belief as to the time used
38 in raising and repairing said barge, nor as to the extent of repairs put on said barge, or what repairs were not made which might or should have been made, and he demands proof from libellants on these points; but he alleges that less than $900.00 would have repaired said barge, and made her as valuable as before the injury.

For answer to the 10th article of said amended libel, respondent denies the statement of libellant that no amount of repairs short of an almost complete reconstruction could have made said barge as good as she was before the , and respondent alleges that less than $800 would have made such repairs, if judiciously expended.

For answer to the 11th article of said amended libel, respondent says he has no knowledge, information, or belief of what said barge would have been worth under a charter-party for 127 days after her said injury, or whether she could have been hired during that period or not, and demands proof of same, if applicable to this suit; but respondent alleges that what said barge might have rented or been hired for
39 is not material to this case, and the question of damages is, if respondent is liable at all, what it would have cost to repair her and the value of her loss whilst undergoing such repairs.

For answer to the 12th article of said amended libel, respondent denies that all and singular of said premises of said amended libel are true. Respondent alleges the injurys to said barge were occasioned by the want of skill and because of the negligence of libellant or its officers in charge of said barge; that small damage was done to the said barge and its cargo; that respondent had the right to erect and maintain said pier for the purpose of commerce and manufactures; that said pier is not in the channel, but only on the side of it, and no further out than is necessary to protect his rafts. And respondent propounds and

alleges that, at various points and places where saw-mills have been erected and exist on the banks of the Upper Mississippi River, the different mill-owners, in the interests of commerce and manufactures,
40 have been compelled to erect piers for booms for their saw-logs, as respondent has done in the Mississippi, and which, like respondent's piers, extend into the water of the Mississippi, and in many instances extend farther into the river than do the piers of respondent's; and respondent alleges that his said pier is a necessity of his business, the manufacture and sale of lumber, and is no obstruction to the channel of the river.

And respondent alleges that, in addition to himself and the large number of persons under his employ in his said mill-works, large sections of country in Iowa, Illinois, and other portions of the United States are, in their need of lumber for buildings and various uses in the mechanical arts, interested in the continuance and prosperity of his said mills, and that, if said pier should be declared to be a nuisance, the usefulness of his said mills will be seriously impaired, as said pier is absolutely necessary to hold and protect his logs and lumber.

And respondent alleges that the channel of the river is outside of said pier, and of abundant width for the largest craft to pass safely
41 when in the hands of an ordinarily skillful pilot, or one who is familiar with the said pier and the river in front.

August 20th, 1872.

McCRARY, MILLER & McCRARY &
P. T. LOMAX,
Att'ys for Respondent.

I, S. J. Atlee, on my oath, lawfully administered, say I am respondent in the foregoing suit, and that the foregoing answer has been read to me, and that the several statements thereof are true, as I verily believe.

S. J. ATLEE.

Subscribed and sworn to before me this 22d day of August, 1872.

H. K. LOVE, *Clerk*,
By ERIE J. LEECH, *Deputy*.

(Endorsed:) Filed August 22d, 1872. H. K. Love, clerk, by Erie J. Leech, deputy.

Afterwards, to wit, at the September term, 1872, of the said U. S. dist. court, a decree was had in this cause, which reads as follows:

42 THE NORTHWESTERN UNION PACKET Company, libellant,
vs.
SAMUEL ATLEE, RESPONDENT.
} Libel.

Heretofore, at this term, this cause came on for hearing before the court upon the pleadings, depositions, and documentary evidence therein, and submitted to the court; and, the same having been argued before the court by counsel for libellant and respondent, & the court having taken the same under consideration until this day, doth now order, sentence, and decree, and it is hereby ordered, sentenced, & decreed by this court, that the collision in question in this cause stated to have been equally the fault of the libellant and respondent, doth pronounce for a moiety only of the damages and costs proceeded for, and doth condemn

the respondent, Samuel Atlee, to pay to the libellant the one moiety of such damages and costs incurred herein; and the court, on its own motion, doth now refer this case to J. H. Craig, as a special commissioner, to examine the testimony in the cause (all of which is in writing)
43 touching the question of damages, and hereby directs that he make a report without delay of the amount of damages proved up by the depositions heretofore filed in the case. And thereupon each party prays for an appeal herein in open court, and same is allowed by the court.

J. M. LOVE, *Judge.*

SEPT. 25, 1872.

(Endorsed:) Filed in open court Sep. 25, 1872. H. K. Love, clerk.

44 Afterwards, to wit, on the 1st day of October, A. D. 1872, the commission heretofore appointed to ascertain the amount of damages sustained by libellant, &c., presented his report, which read as follows:

Report.

THE NORTHWESTERN UNION PACKET COMPANY
vs.
SAMUEL ATLEE.

To the hon. district court aforesaid:

The undersigned, special commissioner, appointed to ascertain from the evidence on file and report the amount of damages sustained by the libellant in the above-entitled cause, in consequence of injuries to the barge Jack Reaney, submits the following report:

The commissioner first carefully examined all the evidence on file, and then heard the arguments of counsel for the libellant and respondent, and then made a re-examination of the evidence, and now, after due consideration, he finds the following items of damages:

1st. That the value of the repairs actually the sum of nine hundred & forty-two $\frac{86}{100}$ dollars, ($942.86.)

45 2nd. That the damage to said barge, in consequence of injuries to the cargo-box, dunnage, & hog-chain, which were not repaired or restored, amount to the sum of five hundred & forty-five dollars, ($545.)

3d. That the damages to said barge over and above the loss of the cargo-box, dunnage, & hog-chain, and over and above such injuries as were remedied and restored by the above repairs, amount to the sum of three hundred dollars, ($300.)

4th. That considering all the circumstances, thirty-six days were reasonable time for the repair of said barge, and that the use of said barge was reasonably worth ten dollars per day; and that, therefore, these damages arising from the detention of said barge amount to the sum three hundred and sixty dollars, ($360.)

That the above items of damage amount to the sum of $2,147.86, one half of which, to wit, the sum of $1,073.93, should be adjudged against the respondent.

Respectfully submitted.

JOHN H. CRAIG,
Special Com.

Com'r's fee, $30.

(Endorsed:) Filed Oct. 1, 1872. H. K. Love, clerk, by Erie J. Leech, dep.

46 Thereupon, upon the same day, libellants, by attorneys, filed exceptions to said report, which reads as follows:

District court of the United States for the district of Iowa, in admiralty.

THE NORTHWESTERN UNION PACKET COMPANY }
vs.
SAMUEL ATLEE. }

Exceptions to commissioner's report.

Now comes libellant, by Howell & Rice, its att'y's, and excepts to the report of J. H. Craig, esq., in this: He excepts to the third (3) paragraph of said report, because the testimony shows that the damages to said barge, over and above the loss of the cargo-box, dunnage, and hog-chain, and over and above such injuries as were remedied and restored by the above repairs, amount to the sum of five hundred (500) dollars.

He excepts to the fourth (4) paragraph of said report, because the testimony shows that the damages arising from the detention of said barge amount to the sum of twelve hundred (1,200) dollars.

He excepts the finding of said commissioner, that all the items of damages referred to in said report amount to the sum of $2,147.86, one-half of which, to wit, the sum of $1,073.93, should be adjudged
47 against the respondent, because the testimony shows that all the said items of damages suffered by libellant amount to the sum of $3,187.86.

HOWELL & RICE,
Att'y's for Libellant.

(Endorsed:) Filed Oct. 1, 1872. H. K. Love, clerk, by Erie J. Leech, dep.

And upon the same day, respondent, by attorneys, filed exceptions to said report, which read as follows:

NORTHWESTERN UNION PACKET COMPANY }
vs.
SAMUEL ATLEE. }

Now comes def't, and excepts to the report of J. H. Craig, esq., *mom'r*, in this: 1. Def't says $25.00 should be deducted from the bill of damages for repairs, on account of that amount of work & damages done, all injury.

2. Def't claims some deduction should have been made for damages done by the steamer striking and breaking in cargo-box barge, as see description of Best.

3. Com'r has allowed too much damages for time to repair boats;
48 two weeks or 14 days, instead of 36 days, should only have been allowed.

McCRARY, MILLER & McCRARY, & LOMAX,
For Def'ts.

(Endorsed:) Filed Oct. 1, 1872. H. K. Love, clerk, by Erie J. Leech, dep.

Afterwards, to wit, at the September term of said court, 1872, and on the 1st day of October, being the 15th day of the term, a decree final was entered herein, which reads as follows:

Decree.

THE NORTHWESTERN UNION PACKET COMPANY, libellant, *vs.* SAMUEL ATLEE, RESPONDENT. } In admiralty.

In this case the court having on the 25th day of September, 1872, rendered a decree that the collision in question in this case was equally the fault of the libellant and respondent, and having pronounced for a moiety only of the damages and costs, proceeded for and condemned the respondent, Samuel Atlee, to pay to the libellant the one moiety of such damages and costs incurred herein, and the court having referred this case to J. H. Craig, as a special commissioner to examine the testimony
49 taken in the cause (all of which is in writing) touching the question of damages, and to report the amount of damages proved up by the deposition heretofore filed in this case.

And the said commissioner having examined the testimony, and filed his report herein, on this first day of October, 1872, and the attorneys for libellant and respondent having each filed exceptions to said report this day, and this cause coming on for final hearing on the report of said commissioner, Mess. J. H. Davidson, & Howell & Rice appearing for libellant, and Mes'rs. McCrary, Miller & McCrary, and P. T. Lomax, appearing for respondents, and the court having heard the argument of counsel and due deliberation being had, it is ordered, adjudged, and decreed that the exceptions of both parties be overruled, and that the said report be, and the same is hereby, confirmed, and that the said respondent pay to the libellant in this action the sum of one thousand and seventy-three and $\frac{93}{100}$ (1,073.93) dollars, and one-half of the costs of this suit, taxed at $.

And thereupon each party prays for an appeal herein in open
59 court to the next circuit court, and same is allowed by the court.

It is further ordered and decreed by the court, each party consenting thereto in open court, that the original depositions heretofore taken in this case, to wit: on the part of libellant, the depositions of E. V. Holcomb, Frederick Heisel, C. B. Goll, W'm J. Gorsuch, Jno. T. Goll, John A. Patton, Frank De Moss, Thomas Douglas, O. F. West, David Le Claire, A. Wempner, Cleophas Baird, W'm Kelley, Uriah Brock, G. W. Duncan, Jerome Ruby, O. M. Ruby, Henry G. Carson, John Griggs, H. C. Gillaspie, Cha's Gillaspie, R. B. Hatch, W. R. Slocum, J. A. Woolverton, Harrison West, W. W. Kinnear, W. F. Davidson, W'm Rhodes, W. T. Davidson's second deposition, taken on Aug. 13, 1872, W. W. Kinnear's second deposition, taken on Aug. 24, 1872, A. A. Scott, H. M. Patton, W'm Redpath, W. H. Barnes; and, on the part of respondent, the deposition of J. W. Wright, E. H. Wonall, and map attached to his deposition, B. W. Davis, John Atlee, Milo A. Pruden, J. W. Campbell, A. B. Woodward, E. G. Wilson, R. H. Heath, with map at-
51 tached to his deposition, Hiram Finch, George Anderson, B. T. Anderson, Ferdinand Kiel, John Schott, F. Tamme, Peter O. Kell, Samuel Atlee, W. A. Griffey, C. Piles, Cha's P. Beard, W. A. Dustin, P. Cowles, James Best, D. D. Merriam, may be used in evidence

on the trial of this case, on appeal in the circuit court of the United States for the district of Iowa. It is further ordered that the said libellant file an appeal-bond in this case in the sum of five hundred (500) dollars within twenty days from this date.

J. M. LOVE,
Dist. Judge.

Oct. 1, 1872.

52 Afterwards a paper was filed in this cause, which reads as follows:

In the circuit court of the United States for the district of Iowa.

THE NORTHWESTERN UNION PACKET COMPANY, libellant & appellant,
vs.
SAMUEL ATLEE, RESPONDENT.

To the honorable the circuit court of the United States for the district of Iowa.

The appeal of the above-named appellant respectfully showeth, that on or about the 23d day of October, 1871, the above-named libellant, The Northwestern Union Packet Company, exhibited its libel in the district court of the United States for the district of Iowa, against the respondent, claiming over fifty dollars, praying, among other things, for the reasons set forth in said libel, that the said respondent might be condemned to pay the demands of the said libellant, and costs and disbursements in said libel mentioned, which libel was afterwards, to wit, on the 24th of July, 1872, amended. That process issued out
53 of said court, having been served on said respondent, Samuel Atlee, he did, on or about the 7th day of November, 1871, file his answer to said libel in the said district court, praying the said court to pronounce against the libel aforesaid, and to condemn the libellant in costs, and otherwise right and justice to administer in the premises; and that afterwards, to wit, on August 22, 1872, the said respondent filed his answer to said amended libel:

That the said cause came on to be heard before the honorable James M. Love, judge of the said district court, on or about the 17, 18th, and 19th days of September, 1872, upon the depositions and proof taken in said cause; and the said judge having advised thereon, on the 25th day of September, 1872, made a decree or sentence in said cause, whereby it was, among other things, sentenced and decreed that the collision in question in this cause stated to have been equally the fault of the libellant and respondent, and said court pronounced for a moiety only
54 of the damages and costs proceeded for and condemned, the respondent, Samuel Atlee, to pay to the libellant the one moiety of such damages and costs incurred therein. And that said court in said decree referred said case to J. H. Craig, as a special commissioner to examine the testimony taken in the case touching the question of damages, and directed that he make report without delay of the amount of damages proved up by the depositions theretofore filed in said case, as by reference to the said decree may more fully appear. That said commissioner reported that the said damages amounted to the sum of two thousand one hundred and forty-seven and $\frac{86}{100}$ (2,147.86) dollars, one-half of which, to wit, the sum of $1,073.93, should be adjudged against

the said respondent; that said libellant and respondent both filed exceptions to said report on the 1st day of October, 1872, which exceptions were on said day overruled by said court, and on the same day the said court made a final decree in said case, confirming said report, and ordering, adjudging, and decreeing that said respondent pay to the
55 libellant in this action the sum of one thousand and seventy-three and $\frac{93}{100}$ ($1,073.93) dollars, and one-half of the costs of said suit, taxed at $. And thus appellants are advised and insist that the said decrees are erroneous, inasmuch as the said libellant was entitled to recover the full amount of damages claimed in their libel and, amended libel, and not merely a part thereof, to wit, the sum of $1,073.93 as found by said decree. And then appellants, for these and other reasons, appeal from the whole of said decree to the next circuit court, to be held in the said district, and on the said appeal they intend to have said cause heard anew in the circuit court on the pleadings and proofs in the district court, and other proof to be introduced in the said circuit court. And they pray that the said decrees and every part thereof may be reversed, with costs, or such other decree thereupon made as to the said circuit court shall seem just; and that the said appellee be condemned to pay to this appellant its costs and damages in the premises.

56 And they pray that the record and proceedings be returned to the said circuit court, and that the said decrees may be reversed, or such other decree thereon be made as to said circuit court shall seem just, and that the appellee may be condemned to pay to the appellant its costs and damages in the premises.

Oct. 2, 1872.

J. H. DAVIDSON AND HOWELL L. RICE,
Att'ys for Libellant.

Service of the above accepted, and copy.
Oct. 2, 1872.

McCRARY, MILLER & McCRARY,
Att'ys for Respondent.

(Endorsed:) Filed Oct. 3, 1872. H. K. Love, clerk, by Erie J. Leech, deputy.

57 The following is a copy of a paper filed herein:

District court of the United States for the district of Iowa.

THE NORTHWESTERN UNION PACKET COMPANY, libellant,
vs.
SAMUEL ATLEE, RESPONDENT.

SIR: The libellant appeals from the decrees of the court in this cause to the next circuit court.

J. H. DAVIDSON AND HOWELL & RICE,
Att'ys for Libellant.

Dated Oct. 2d, 1872.
To H. K. LOVE, *Clerk.*

The above notice served upon us this Oct. 2, 1872. Servis accepted.
McCRAY, MILLER & McCRARY,
For Respondent.

I hereby accept service of the above notice, this 3d day of October, 1872.

H. K. LOVE, *Clerk*,
By ERIE J. LEECH, *Dep.*

(Endorsed:) Filed Oct. 3, 1872. H. K. Love, clerk, by Erie J. Leech, deputy.

58 The following is a copy of the appeal-bond filed in this cause:

Know all men by these presents that we, the Northwestern Union Packet Company, and Frank Peasley, and H. E. Hunt of Burlington, Iowa, are held and firmly bound unto Samuel Atlee, in the sum of five hundred (500) dollars lawful money of the United States, to be paid to the said Samuel Atlee, his executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, our and each of our heirs, executors, and administrators, firmly by these presents, sealed this 9th day of October, 1872.

The condition of this obligation is such that whereas the said Northwestern Union Packet Company has appealed from the decrees rendered by the district court of the United States for the district of Iowa, at Keokuk, in the case of the Northwestern Union Packet Company vs. Samuel Atlee, in admiralty, which decrees were rendered at the September term of said court, 1872, to the circuit court of the United States for the district of Iowa:

59 Now if the said Northwestern Union Packet Company shall pay all costs that may be accrued against it in this case, then this obligation to be null and void, otherwise of full force and effect.

In witness whereof we have hereunto set our hands this 9th day of October, 1872.

The Northwestern Union Packet Company,
By HOWELL & RICE,
Their Att'ys.
H. E. HUNT.
FRANK PEASELY.

DISTRICT OF IOWA,
Des Moines County, ss:

H. E. Hunt & Frank Peasely, each *hearing* duly sworn, each says that he is worth the sum of one thousand dollars, over and above all his just debts and liabilities, in property in the State of Iowa liable to execution.

H. E. HUNT.
FRANK PEASELEY.

Subscribed & sworn to before me this 9th day of October, 1872.
As witness my hand & notarial seal.
[SEAL.]
HENRY C. GARRETT,
Notary Public, Des Moines Co., Iowa.

The above and foregoing bond approved by me, and filed this 10th day of October, A. D. 1872.

H. K. LOVE, *Clerk*,
By ERIE J. LEECH, *Deputy.*

60, 61 THE UNITED STATES OF AMERICA,
District of Iowa, ss:

I, H. K. Love, clerk of the United States district court for the district of Iowa, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office, in the cause within mentioned. I further certify that the depositions and exhibits herewith returned and referred to in the decree in this case, dated October 1st, 1872, are the original depositions used in the case on the trial in said district court.

Witness, Hon. J. M. Love, judge of said district court, with the seal thereof affixed at office at Keokuk, October 10th, A. D. 1872.

[SEAL.] H. K. LOVE, *Clerk*,
By ERIE J. LEECH, *Deputy*.

62 And afterwards, to wit: on the 15th day of October, A. D. 1872, there was filed in said clerk's office in said cause an agreement of parties, which said agreement is in words and figures following, to wit:

63 Circuit court United States, district of Iowa.

NORTHWESTERN UNION PACKET COMPANY, appellant,
vs.
SAMUEL ATLEE, APPELLE'. } No. 8. In admiralty.

By consent of counsel representing both appelle' & appellant in the above-named cause, it is hereby ordered that appellant's counsel shall, within six (6) weeks from this date, prepare and submit to appellee's counsel, D. F. Miller, their written brief and argument in the above-named case, and that within four (4) weeks after appellant's counsel shall submit their said written brief and argument to said appellee's counsel herein, the said appellee's counsel shall prepare and submit to appellant's counsel their written brief and counsel herein; and that within three weeks thereafter, said appellant's counsel shall prepare and send to his honor Jno. F. Dillon their (appellant's) brief and argument in reply to appellee's said brief, and that this cause shall be considered and decreed upon, and each party shall have their right
64 of appeal herein, and notice of such appeal shall be entered in the decree as having been claimed and allowed in open court.

Oct. 15, '72. HOWELL & RICE,
Att'ys for Appellant.
D. F. MILLER,
For Appellee.

(Endorsed:) Agreement made Oct. 15, 1872.

65 And afterwards, to wit, on the second day of November, the same being of the October term of said court, in the records of the proceedings thereof in said entitled cause appears the following entry, to wit:

NORTHWESTERN UNION PACKET CO., libellant,
vs.
SAMUEL ATLEE. } No. 8. Appeal.

This case is submitted to the court, parties to furnish printed argu-

ments, as per written agreement, and parties have leave to withdraw pleadings, papers, and depositions, to prepare their printed arguments.

66 And upon the trial of said cause the said libellant and appellant, to sustain the issues on its part, introduced and read in evidence certain documents and depositions of which the following are true copies:

67 *N. W. Union P. Co. incorporation papers.—Filed for record May 4th*, 1866, 12 *o'c. m.*

Articles of incorporation of the Northwestern Union Packet Co., organized under and by virtue of the 52nd chapter of revision of 1860 of the laws of Iowa, entitled, Corporations for pecuniary profit.

W. F. Davidson, John Lawler, George L. Dunlap, and John C. Gault hereby agree to, and do hereby associate themselves, for the purpose of becoming incorporate under the above-entitled law of the State of Iowa.

It is agreed, first, that the name of the corporation shall be the Northwestern Union Packet Co., and that the general nature of the business shall be to purchase, charter, buy, build, own, and control vessels to be propelled in whole or in part by steam or otherwise, for the purpose of using them in the transportation of persons and property on the Mississippi River and its tributaries, to erect, purchase, lease, maintain, and own docks, wharves, warehouses, and any and all kinds

68 of buildings, structures, or fixtures necessary and useful for carrying on the business or transporting property or persons, or for the purpose of building or rebuilding or repairing vessels of any and every kind.

And it is agreed further that this corporation shall have power to lease, transfer, assign, convey, and sell any and all of its vessels, steamboats, barges, wharves, warehouses, docks, and all of its property of every description, and to do any and all acts and things which may be necessary to an economical and sucessful prosecution of their said business, and, amongst other powers not hereinbefore enumerated, it is agreed that it shall have power to borrow money in its corporate capacity and name, and in such capacity to make, execute, and deliver to any person or persons or body corporate or politic any and all writings, notes, bonds, mortgages in real estate or personal property, or other security of whatsoever name or kind, to enter into any arrangements,

69 agreement, or contract with any person or persons, association, copartnership, or corporation in reference to the storring, forwarding, or freighting of any kind of property by this corporation, or to any and all business incidental to or arising from the transportation of persons and property.

It is agreed, secondly, that the corporate stock of the corporation shall be one million of dollars, which may be increased from time to time by vote of at least of two-thirds of the stock to any sum not exceeding five millions of dollars, the stock being divided into shares of one hundred doll's each, which shall be deemed personal property, and shall be transferable on the books of the corporation in such manner as the by-laws shall direct.

It is agreed, thirdly, that W. F. Davidson, John Lawler, Geo. L. Dunlap, John C. Gault, & W'm Rhodes shall constitute the first board of directors, and shall hold officers until other directors are elected by

the stockholders, and in case any of said persons should die or refuse or neglect to act as such directors, the others may declare his or her
70 places vacant, and elect some *some* others or other persons in his or their stead; and said directors, during their continuance in office, shall have and possess all the power, right, and authority conferred by this agreement in the board of directors to be elected by the stockholders.

It is agreed, fourthly, that the term of this corporation shall commence on the 1st day of May, A. D. 1866, and continue the full term of twenty years, unless sooner terminated by mutual consent; and it is further understood and agreed that this corporation may be dissolved at any time by a vote of three-fourths of the stock at a special meeting called for that purpose upon thirty days' notice, upon publication in a newspaper published in the city of Dubuque, Iowa; and it is further agreed that these articles of association, except the one last recited, may be changed at any time by a vote of two-thirds of stock at a general or special meeting called for that purpose.

It is agreed, fifthly, that the officers of the corporation shall
71 be president, general manager, treasurer, and not more than seven nor less than five directors, including the president, all of whom shall be stockholders. The directors shall be elected by ballot by the stockholders, and at their first meeting shall elect one of their number president and elect a general manager, secretary, and treasurer, and a majority of the directors shall be competent to manage the affairs of the corporation; it is further understood and agreed that the officers of the corporation shall be elected annually at such time and place as the board of directors may designate from time to time, and each stockholder shall be entitled to one vote for each share of stock owned by him, at least ten days' notice to be given of such election by the secretary by publishing in at least one newspaper in Chicago and one in Dubuque.

It is agreed, sixthly, that the business of the corporation shall be transacted by the directors, and they may adopt, alter, and amend by-laws and rules and regulations for the government.

72 It is agreed, seventhly, that every member of the corporation shall be bound to pay the amount subscribed as stock at such times and in such sums as may be required by the directors, and a failure to pay any sum or installment as required within thirty days after demand and notice shall operate as a forfeiture to the corporation of all previous payments, and the party in default shall be liable to pay any balance that may due on his, her, or their subscription; and it is further understood and agreed that the property, rights, credits, and effects of the corporation shall be held in trust by the directors for the use of the creditors, and that in no event whatever shall the individual property of the stockholders be liable for the debts of the corporation, and that the highest amount of indebtedness or liability to which the corporation may, at any time, be subject shall not exceed one-fourth of the capital stock.

73 It is agreed, ninthly, that the board of directors may fill any vacancy in their body occasioned by death, resignation, or otherwise, and the person or persons so appointed shall serve until the next general election for directors.

In witness whereof we have hereunto set our hands this 30th day of April, A. D. 1866.

WILLIAM F. DAVIDSON.
J. LAWLER.
GEO. L. DUNLAP.
JNO. GAULT.

[20-c't U. S. rev. stamp. N. W. U. P. Co. April 3d, 1866.]

STATE OF IOWA, *Dubuque County, ss:*

I, Warner Lewis, recorder of deeds in and for said county, do hereby certify that the foregoing is a true & compared copy from the records of said office.

Witness my hand this 21st day of Jan'y, 1870.

W. LEWIS, *Recorder.*

[U. S. int. rev. stamp, 5 cents.]

74 This paper admitted in evidence and used on the trial of the case of N. W. U. Packet Co. vs. Sam'l Atlee, in district court, on part of libellant.

J. M. LOVE, *Dist. Judge.*

75 Form D. [Official number.

Picture steamboat.] [Numeral letters.

License No. 73.

License of a vessel above twenty tons to carry on the coasting-trade for one year.

DISTRICT OF MINNESOTA, *Port of Saint Paul:*

An act of the Congress of the United States permanent.

In pursuance of an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting-trade and fisheries, and for regulating the same," approved February 18, 1793, and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864, William F. Davidson, managing owner, and P. S. Davidson, master of the ship or vessel hereinafter mentioned, having given bond that the barge called the Jack Reaney, whereof the said P. S. Davidson is master, burthen 145 tons and 54-hundredths, as appears by her enrollment issued at this port, numbered thirty-eight, and dated November 10, 1867, and the said P. S. Davidson, having sworn that the
76 said ship or vessel shall not be employed in any trade while this license shall continue in force whereby the revenue of the United States shall be defrauded, and having also sworn that this license shall not be used for any other vessel or for any other employment than is herein specified, license is hereby granted for the said barge, called the Jack Reaney, to be employed in carrying on the coasting-trade for one year from the date hereof, and no longer.

Given under my hand and seal of office, at the port of Saint Paul, in the district of Minnesota, this 25 day of October, in the year one thousand eight hundred and seventy.

[SEAL.]

J. C. STOEVER, *Collector.*
By GEO. W. MOORE, *D. Coll.*

This paper was admitted in evidence and used on the trial of the case of N. W. U. Packet Co. vs. Sam'l Atlee, in dist. court, on part of libellant.
J. M. LOVE, *Dist. Judge.*

(Endorsed:) License No. 73, of the barge Jack Reaney, 145 $\frac{54}{100}$ tons, issued at the port of Saint Paul, district of Minnesota, October 25, 1870. J. C. Stoever, collector.

Picture of steamboat.

77 Enrollment in conformity to an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting-trade and fisheries, and for regulating the same," approved February 18, 1793, and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864.

No. 38. Permanent.

When surrendered.

W'm F. Davidson having taken or subscribed the oath required by the said act, and having sworn that the vessel hereinafter named is owned by different persons, in shares, as stockholders, by the name and style of the Northwestern Union Packet Company, whereof the said W'm F. Davidson is president, and that all the persons so owning a share or shares are citizens of the United States, sole owner of the ship or vessel called the Jack Reaney, whereof W'm F. Davidson is at present master, and as he hath sworn is a citizen of the United States, and that the said ship or vessel was built at , in the year 18 , as appears by her certificate of enrollment No. 110, issued and dated at the port of Dubuque, Iowa, Nov., 1866, now surrendered on account of change of district; and said enrollment having certified that the said ship or vessel has one deck and no mast, and that her length is one hundred and thirty-seven $\frac{1}{10}$ feet, her breadth is twenty-five and $\frac{5}{10}$ feet, her depth is five and $\frac{4}{10}$ feet; that she measures one hundred and forty-five tons and fifty-four hundredths, viz:

Date of surrender.

Cause of surrender.

78

Tonnage. $\frac{1}{100}$

Capacity under tonnage-deck.....
Capacity of on the tonnage-deck.....

Total tonnage.....

And that she is a barge; has round stern and plain head; and the said W'm F. Davidson, having agreed to the description and admeasurement above specified, and sufficient security having been given, according to said acts, the said barge has been duly enrolled at the port of St. Paul, Minnesota.

Given under my hand and seal of office at the port of St. Paul, this tenth day of November, in the year one thousand eight hundred and sixty-seven.

[SEAL.]

JOSEPH LE MAY, *Collector*,
By GEO. W. MOORE, *D. Coll.*

CUSTOM-HOUSE, PORT OF ST. PAUL,
DISTRICT OF MINNESOTA,
Oct. 31*st*, 1871.

79 I, J. C. Stoever, collector of customs at the port of St. Paul,

district of Minnesota, do certify that I have compared the within copy of the enrollment of the barge Jack Reaney with the original enrollment, now of record in my office, and the same is a true copy of said enrollment, and of the whole thereof.

[SEAL.]

J. C. STOEVER,
Collector of Customs,
By THO'S F. MASTERSON,
Act'g Dep'ty Coll.

[U. S. int. rev. st'p, ($0.05,) five cents. Canceled.]

This paper was admitted in evidence and used on trial of the case of N. W. U. Packet Co. vs. Sam'l Atlee, in dist. court, on part of libellant.

J. M. LOVE, *Dist. Judge.*

80 Enrollment in conformity to an act of the Congress of the United States of America, entitled "An act for enrolling or licensing ships or vessels to be employed in the coasting-trade and fisheries, and for regulating the same," approved February 18, 1793, and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864.

Picture of steamboat. No. 48. Permanent.

Cha's E. Sencerbox having taken or subscribed the oath required by the said act, and having sworn that the vessel hereinafter named is owned by different persons in shares as stockholders by the name and style of the Northwestern Union Packet Company, whereof William F. Davidson is president; and that all the persons so owning a share or shares are citizens of the United States, sole owners of the ship or vessel called the Phil Sheridan, whereof Cha's E. Sencerbox is at present master; and, as he hath sworn, is a citizen of the United States, and that the said ship or vessel was built at Cincinnati, in the year 1866, as appears

When surrendered.

Date of surrender.

Cause of surrender.

81 by her certificate of enrollment No. 12, issued and dated at the port of Dubuque, on the 6th day of June, 1867, now surrendered at this office on account of change of district. An' said enrollment having certified that the said ship or vessel has one deck and no mast, and that her length is two hundred and twenty-seven $\frac{3}{10}$ feet, her breadth is thirty-six and $\frac{4}{10}$ feet, her depth is six and $\frac{3}{10}$ feet, that she measures seven hundred and twenty-eight tons and 46-hundredths, viz:

	Tonnage $\frac{1}{100}$
Capacity under tonnage deck	383.59
Capacity of enclosure on the tonnage-deck	344.87
Total tonnage	728.46

And that she is a steamer, has cabin on deck, transom-stern, and plain head; and the said Cha's E. Sencerbox having agreed to the description and admeasurement above specified, and sufficient security having been given, according to the said acts, the said steamer has been duly enrolled at the port of St. Paul, Minnesota.

Given under my hand and seal of office, at the port of St. Paul, this

25th day of May, in the year one thousand eight hundred and sixty-eight.

[SEAL.] JOSEPH LE MAY,
Collector,
By GEO W. MOORE,
D. Coll.

82 CUSTOM-HOUSE, PORT OF ST. PAUL,
DISTRICT OF MINNESOTA,
Oct. 31st, 1871.

I, J. C. Stoever, collector of customs at the port of St. Paul, district of Minnesota, do certify that I have compared the within copy of the enrollment of the steamboat Phil Sheridan with the original enrollment now of record in my office, and the same is a true copy of said enrollment, and of the whole thereof.

[SEAL.] J. C. STOEVER,
Collector of Customs,
By THO'S T. MASTERSON,
Act'g Dep'ty Coll.

[U. S. int.-rev. st'p, five cents.]

This paper was admitted in evidence and used on the trial of the case of N. W. U. Packet Co. vs. Sam'l Attee, in district court, on part of libellant.

J. M. LOVE, *Dist. Judge.*

Picture of steamboat. 83 *License of a vessel above twenty tons to carry on the coasting-trade for one year.*

No. 75. Permanent. DISTRICT OF THE PORT OF ST. PAUL, MINNESOTA :

In pursuance of an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels, to be employed in the coasting-trade and fisheries, and for regulating the same," approved February 18, 1793, and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864, E. V. Holcomb having given bond that the steamboat called the Phil Sheridan, whereof the said E. V. Holcomb is master, burthen seven hundred & twenty-six tons and 46 hundredths, No. , as appears by her certificates of enrollment, No. 48, issued at this office, and dated May 25, 18'8, shall not be employed in any trade while this license shall continue in force whereby the revenue of the United States shall be defrauded, and having also sworn that this license shall
84 not be used for any other vessel, or for any other employment than is herein specified, license is hereby granted E. V. Holcomb for the said steamer Phil Sheridan to be employed in carrying on the coasting-trade for one year from the date hereof, and no longer.

Given under my hand and seal of office, at the port of Saint Paul, district of Minnesota, this twenty-sixth day of May, in the year one thousand eight hundred and seventy.

[SEAL.] J. C. STOEVER,
Collector of Customs,
By GEO. W. MOORE,
Deputy Collector.

CUSTOM-HOUSE, ST. PAUL, MIN.,
August 1, 1872.

'I hereby certify that the within is a true copy of the original license of the steamboat Phil Sheridan for the year ending May 26, 1871; that I have carefully compared the same with the original record thereof, and further certify that it is a true copy of the whole thereof.

GEO. W. MOORE,
Dep'y Coll. Customs, St. Paul, Min.

[U. S. int.-rev. st'p, five cents.]

85 This paper was admitted in evidence and used in the trial of the case of N. W. U. Packet Co. vs. Sam'l Atlee, in dist. court, on part of libellant.

J. M. LOVE, *Dist. Judge.*

(Endorsed:) No. 75. License of the st'm'r Phil Sheridan, issued at the port of St. Paul May 26, 1870. Burthen, $726\frac{46}{100}$ tons.

86 *United States inspector's certificate.*

[Picture of steamboat.] [H.

Eighteenth. To pilots. Issue.

This is to certify that Cephus B. Goll has given satisfactory evidence to the undersigned, supervising inspector of steam-vessels for the fourth supervising district, that he is a skillful pilot of steam-vessels, and can be entrusted to perform such duties upon the waters of the Mississippi, Ohio, Cumberland, and Tennessee Rivers, navigating between Saint Louis, New Orleans, St. Anthony, Nashville, Pittsburgh, Gulf, Tennessee Rivers, and he is hereby licensed to act as first-class pilot on steam-vessels for the term of one year from this date upon the above-named route.

Given under my hand this eleventh day of April, 1871.

FRANK BURNETT,
93.] *Supervising Inspector, 4 Dist.*

This paper was used in evidence by libellant on trial of case of N. W. U. Packet Co. vs. Sam'l Atlee, in dist. cou't on part of libellant.

J. M. LOVE, *Dist. Judge.*

87 In the district court of the United States for the district of Iowa.

THE NORTHWESTERN UNION PACKET COMPANY, libellant, *vs.* SAMUEL ATLEE, RESPONDENT. } In admiralty.

Stipulation.

It is hereby agreed that the libellant in the above-named suit may take the depositions of Cephus B. Goll, E. V. Holcomb, Frank de Meres, Fred. Heirsel, and Geo. Jenks, at St. Louis, Mo., before Campbell O. Bishop or some other notary public, in and for St. Louis County, Mo., upon the annexed interrogatories-in-chief, and the cross-interrogatories

which respondent's att'ys may deliver to libellant's att'y within five days from this date. Said depositions to be taken on behalf of libellant, and the issuance of a commission is expressly waived, and depositions so far as competent to be used on trial of said cause.

1871, Nov. 28.

HOWELL & RICE, *Att'ys for Libellant.*
McCRARY, MILLER & McCRARY,
Att'y' for Deft.

Interrogatories-in-chief by libellant to all of said above-named witnesses but Geo. Jenks.

Q. State your age, place of residence, your business or occupation, and how long you have been engaged in same.

2. If, in answer to interrrogatory No. 1, you have stated in substance you have been engaged in steamboating, then state upon what waters, and if you saey upon the Mississippi River, then state during what years, if at all, you have been engaged in navigating steamboats past the town of Fort Madison, in Iowa.

3. Where were you, and how were you engaged, on or about the 23d April, 1871, when the steamboat Phil Sheridan or barge Jack Reaney ran against a pier or abutment near Fort Madison?

4. If you say you were on board of the steamboat Phil Sheridan at that time, state how you was then employed, and whether you then saw what happened.

89 4½. Now state which way the Sheridan was going at the time, on which side of the boat the barge Jack Reaney was lashed, what part of the barge struck the pier, which pier it was which was struck, how many piers there are at said place, and all that happened then and there.

5. What damages, if any, were done to the barge? Describe same, & state the extent of the damages.

6. What became of the barge after she struck the pier?

7. If you say, in answer to the last question, that the barge sunk, state what, if anything, was done to prevent her sinking.

8. What was the condition of the barge at the time she struck the pier?

9. What was the size, mod*le*, & ton'age of s'd barge?

10. What was the condition of the st'b't Phil Sheridan at the time of the s'd collision?

90 11. How was said steamboat & barge manned and equipped at the time of the collision?

12. How long, before the barge struck the pier, was it you saw the pier, if you did see it?

13. How far off was the barge from the pier when you first saw the pier, if you did see it?

14. What officers were on watch at the time, and what was done to prevent the collision?

15. What time of day or night was it when the collision took place?

16. State whether there was any light or other signal on the pier which the barge struck at the time of the collision.

17. Where is said pier located; how far below the landing at F't Madison, and how far is the pier out from the bank of the river, on the Iowa side?

91 18. How many piers are there at or near F't Madison? Of

what are they constructed, and state about what is the size of each, and describe their location, and how far apart are they?

19. How high was the top of the pier which the barge struck above the water at the time of the collision, and how far could it then that night be seen?

20. How deep was the water around said pier at the time of the collision?

21. How deep was the water at that time between that pier and the Iowa shore? Say, out one hundred feet from the pier, out towards the Iowa shore?

22. Where was the channel of the river at that place at the date of the collision, (23 April, 1871,) and how was said piers located, in respect to said channel?

92 23. State, if you know, if steamboats previously ran in the same place and channel where the Sheridan and barge were when the collision took place?

24. State whether steamboats ran on the inside of that pier, i. e., between it and the Iowa shore, when the water was high, or whether they could have run there.

25. What does that pier and each of the piers constitute in that river?

26. In what way, if any, does that pier effect the navigation of the river?

27. What way, if any, are the dangers of navigation on said river affected by said pier?

28. From what port, in what State, to what port, in what State, were the Phil Sheridan and barge voyaging at the time of said collisions?

29. What trip of that season was it said boat was then making?

30. State any other matter or thing of interest to the libellant in this case.

N. B. ☞The notary will put the following additional interrogatories to witness, Cephus B. Gall:

93 a. How long have you been licensed to pilot steamboats on the Mississippi River, past F't Madison, and how many years have you been so engaged?

b. State if you knew of the existence of the pier at the time of the collision, and why?

c. If you *said* pier before the barge struck it, what did you do to prevent the collision?

d. What more than you may have done, could have been don't to have prevented the collision?

HOWELL & RICE,
Att'y for Libellant.

N. B. ☞ The notary will only put on behalf of libellant, to witness Geo. Jenks, interrogatories-in-chief numbered 1 & 2, and then put this interrogatory as No. 3 of his examination, to wit:

3. State whether you are acquainted with the pier, in the Mississippi River just below the landing at F't Madison, on the Iowa side?

Then notary will put to him No's 17, 18, 24, 25, 26, 27, & 30.

HOWELL & RICE,
Att'y for Libellant.

In the U. S. D. C. in admiralty at Keokuk.

94 NORTHWESTERN UNION PACKET COMPANY
vs.
SAMUEL ATLEE.

Cross-interrogatories to be propounded to each of the witnesses on part of defendant.

Int. 1. Are you a pilot on the Upper Mississippi River? If so, how long have you been so piloting?

Int. 2. How far is the pier, in front of Atlee's mill, from the Iowa bank of the Mississippi?

3. Is there any water between said pier and the Iowa shore, when the river is at its lowest stage?

4. Was not that pier used as a base for a boom which held saw-logs for Atlee's saw-mill, when the barge Jack Reaney and Phil Sheridan struck against it?

95 5. Can you say which it was struck the pier, the Sheridan or the Reaney?

6. State if you ever saw the barge Jack Reaney, and examine' her d'mage after she was raised.

7. If you say you examined the barge after it was raised, state how near you was to it when you examined it.

8. If you have stated in answer to plaintiff's interrogatories, "what became of the barge after she struck the pier," now state how you know what became of the barge; did some one tell you or what was your information?

9. If you have stated what was the size, mod*dle*, and ton'age of said barge, state if you measured it to know its size & ton'age, or only guessed at it.

10. How long had you been on the river passing by that pier before said barge struck it?

96 11. Did you not see that pier that the barge struck when passing on the river before the collision took place?

12. State how high that pier stood out the water at the time of the striking, and about how large it was in length & breadth as near as you can judge.

13. Did not long strings of lumber usually lay next above said pier while you were navigating the river before the barge struck the pier?

14. Is there not just a few rods above the pier a large sand-bar extending from the Iowa shore, two or three hundred feet farther than the pier, and which sand-bar in low stage of the river is entirely out of water?

15. In a low stage of water, would not a vessel*l* have to run in two or three hundred feet towards the Iowa shore from around the point of the sand-bar before it could reach that pier?

97 16. Is not the channel of the river at low water at least four or five hundred feet on the outside of that pier, toward Illinois shore, or if it is not that far out, how far is it out beyond the pier?

17. After that pier was erected and before said barge struck the pier, did not Atlee's rafts of lumber extend out from fifty to seventy-five feet beyond the pier towards the middle of the river, or if they did not extend out that far, how far did they extend out beyond the pier?

Int. 18. If you have stated you ever saw a steamboat run between that pier and the Iowa shore, name what boat it was, and give the date that passage was made?

Int. 19. You are asked by pl'ff "What does that pier and each of the piers constitute in that river?" State the number of piers there are in the Upper Mississippi River, and where each one is located,
98 and what each one is used for; we are not inquiring about bridge-piers, but piers in front of mills in connection with log-harbors.
20. Is not the pier where the barge struck readily seen in the day-time, several miles both up and down the river from its location?

McCRARY, MILLER AND McCRARY,
Att'ys for Defendant.

Defendant objects to each of the questions of plaintiff so far as it aims to draw the opinion of witnesses who have not been proved to be experts.

And defendant also objects to any evidence of witness which shall be given on hearsay, or whom shall have expressed opinion when not having been proved to be experts.

99 In the district court of the United States for the district of Iowa.

The deposition of Edwin V. Holcomb, a witness produced, cautioned, sworn, and examined before me, Rich'd H. Spencer, a notary public, within and for the county of S't Louis and State of Missouri, duly commissioned and qualified, in pursuance of the annexed stipulation of parties at the office of Spencer and Hatch, No. 304 Olive street, in the city of S't Louis, State aforesaid, on the 22nd day of December, A. D. 1871, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of said day, to wit, at and after the hour of ten o'clock, to be read in evidence in a certain cause now pending in the district court of the United States for the district of Iowa, wherein the Northwestern Union Packet Company is libellant and Samuel Atlee is respondent, on behalf of the libellant.

100 Edwin V. Holcomb, of lawful age, having been by me first duly cautioned, examined, & sworn to testify the whole truth, doth depose and say, in answer to the following interrogatories and cross-interrogatories:

Interrogatory 1st. State your age, place of residence, your business or occupation, and how long you have been engaged in same.

Answer. My age is thirty-seven years. Reside in Galena, Illinois. Am a steamboat captain, and have been steamboating twenty-one years.

Interrogatory 2nd. If, in answer to interrogatory No. 1, you have stated in substance you have been engaged in steamboating, then state upon what waters, and if you say upon the Mississippi River, then state during what years, if at all, you have been engaged in navigating steamboats past the town of Fort Madison, Iowa.

Answer. Have been on the Mississippi River and its tributa-
101 ries, principally between S't Louis and S't Paul, and I navigated vessels past Fort Madison, Iowa, during the seasons of 1867, '8, '9, '70, & '71.

Interrogatory 3d. Where were you, and how were you engaged, on or about the 23d April, 1871, when the steamboat Phil Sheridan, or barge Jack Reaney, ran against a pier or abutment near F't Madison?

Answer. On or about the 23d of April, 1871, I was on board of the steamboat Phil Sheridan, as captain.

Interrogatory 4th. If you say you were on board of the steamboat Phil

Sheridan at that time, state how you was then employed, and whether you then saw what happened?

Answer. When we left the landing at Fort Madison, I went down from the roof into the clerk's office to examine the register and see if there were any passengers to go off at Nauvoo. While thus engaged I heard the bell ring to stop her engines. I immediately went out
102 on to the guards, and as I opened the door to go out, the barge in tow, the Jack Reaney, struck the pier. I only saw what happened after the collision.

Interrogatory 4½th. Now please state which way the Sheridan was going at the time, on which side of the boat the barge Jack Reaney was lashed, what part of the barge struck the pier, which pier it was which was struck, how many piers there are at said place, and all that happened then and there.

Answer. The Sheridan was on her way from S't Paul to S't Louis, and was going down stream; the barge Jack Reaney was lashed to the starboard side of the Sheridan; as near as I can tell she struck on the forward quarter, starboard side, and raised up on to and ran quartering over the pier; coming out of the lighted cabin into the darkness, I could not see very distinctly. There are two piers there, and I believe it was the upper one that the barge ran on to. The side of the barge
103 was crushed in, and she was sinking so rapidly that we had but a few minutes to do anything. I instructed the pilot to run her into shore, so as to let the barge sink in shoal water. She was so badly crushed that I saw she would sink in a few minutes, and I put the men to carrying off freight. She sunk before we could get her to land, and before we had got the freight off of her. I think she sank in five minutes after the collision.

Interrogatory 5th. What damages, if any, were done to the barge? Describe same, and state the extent of the damages.

Answer. She was so badly damaged that she sank, as I stated above, but I could make no examination of her, as she was under water, except a little of her deck at the bow and stern.

Interrogatory 6th. What became of the barge after she struck the pier?

104 Answer. After getting the freight off she floated with her deck even with the surface of the water, and we shoved her as close as we could get her to the shore, and got a line out from her to the shore, and left her.

Interrogatory 7th. If you say, in answer to the last question, that the barge sunk, state what, if anything, was done to prevent her sinking.

Answer. Nothing could be done to prevent her from sinking, because her side and part of the bottom was broken right in, and the collision had knocked her all out of shape.

Interrogatory 8th. What was the condition of the barge at the time she struck the pier?

Answer. She was in good condition, stanch and sea-worthy.

Interrogatory 9th. What was the size, model, and ton'age of said barge?

Answer. I cannot tell except that she was a model barge.
105 Her custom-house papers will show these things.

Interrogatory 10th. What was the condition of the steamboat Phil Sheridan at the time of the said collision?

Answer. The Sheridan was in every respect sound, staunch, and seaworthy, and but a short time before had been inspected by the proper

Government officers, and she complied in every particular with the requirements of the laws.

Interrogatory 11th. How was said steamboat and barge manned and equipped at the time of the collision?

Answer. They were both fully manned, officered, and equipped; just as the law required.

Interrogatory 12th. How long before the barges struck the pier was it you saw the pier, if you did see it?

Answer. I did not see the pier until after she struck.

Interrogatory 13th. How far off was the barge from the pier when you first saw the pier, if you did see it?

106 Answer. I did not see it.

Interrogatory 14th. What officers were on watch at the time, and what was done to prevent the collision?

Answer. Cephas B. Goll, pilot, was at the wheel, I was captain on watch, and John Patten, 2nd mate, was on watch. Frank De Mas was clerk, and a man by the name of Fred. Heisel was watchman on deck. I only know that I heard the bell ring to stop her, and the next moment came the crash of the collision.

Interrogatory 15th. What time of day or night was it when the collision took place?

Answer. It was about eleven o'clock at night.

Interrogatory 16th. State whether there was any light or other signal on the pier which the barge struck at the time of the collision.

Answer. I did not see any light or other signal on or about the pier.

107 Interrogatory 17th. Where is said pier located; how far below the landing at F't Madison, and how far is the pier out from the bank of the river on the Iowa side?

Answer. Said pier is located about one mile from the Fort Madison landing, and from 40 to 50 yards out from the bank at that stage of water.

Interrogatory 18th. How many piers are there at or near Fort Madison; of what are they constructed? And state about what is the size of each, and describe their location and how far apart they are.

Answer. There are two piers there. They are of stone, cribbed with lumber; don't know their size. I think they are about 150 yards apart.

Interrogatory 19th. How far was the top of the pier which the barge struck above the water at the time of the collision, and how far could it that night be seen?

Answer. I don't know.

108 Interrogatory 20th. How deep was the water around said pier at the time of the collision?

Answer. I don't know.

Interrogatory 21st. How deep was the water at that time between that pier and the Iowa shore, say, out one hundred feet from the pier, out towards the Iowa shore?

Answer. I never measured, and don't know; but I have no doubt there was water enough for a large boat (the Sheridan, for instance) to have gone down inside that pier.

Interrogatory 22d. Where was the channel of the river at that place at the date of the collision, (23d April, 1871,) and how was said piers located in respect to said channel?

Answer. The channel ran right along by those piers. They stood in the right-hand edge of the channel going down stream.

109 Interrogatory 23d. State, if you know, if steamboats previously ran in the same place and channel where the Sheridan and barge were when the collision took place.

Answer. That is the customary channel, and boats always ran there.

Interrogatory 24th. State whether steamboats ran on the inside of that pier, i. e., between it and the Iowa shore, when the water was high, or whether they could have run there.

Answer. I think they could run there, but don't think it was customary.

Interrogatory 25th. What does that pier, and each of the piers, constitute in that river?

Answer. I don't understand the question. The pilot did not know they were there; and, as there were no lights on said piers, hence the collision occurred.

Interrogatory 26th. In what way, if any, does that pier effect
110 the navigation of the river?

Answer. I don't think, if it was lighted up, that it would affect navigation, because there is room to go on the other side; but, without a light, it was dangerous.

Interrogatory 27th. What way, if any, are the dangers of navigation on said river affected by said pier?

Answer. It is now dangerous while there is no light on them—in the night-time.

Interrogatory 28th. From what port in what State to what port in what State were the Phil Sheridan and barge voyaging at the time of said collision?

Answer. From S't Paul, Minnesota, to S't Louis, Missouri.

Interrogatory 29th. What trip of that season was it said boat was then making?

Answer. It was the first trip of that season for the Sheridan.

Interrogatory 30th. State any other matter or thing of interest
111 to the libellants in this case.

Answer. I know of nothing.

Cross-interrogatories.

Cross-interrogatory 1st. Are you a pilot on the Upper Mississippi River; if so, how long have you been so piloting?

Answer. I am not a pilot in that part of the river, but am from Dubuque to S't Paul, and have been for twenty-one years.

Cross-interrogatory 2nd. How far is the pier in front of Atlee's mill from the Iowa bank of the Mississippi?

Answer. I don't know; but think about 150 feet.

Cross-interrogatory 3d. Is there any water between said pier and the Iowa shore when the river is at its lowest stage?

Answer. I think there is a little; but when the accident happened it was a very high stage of water, so boats could have gone between the pier and shore.

112 Cross-interrogatory 4th. Was not that pier used as a base for a boom which held saw-logs for Atlee's saw-mill when the barge Jack Reaney or Phil Sheridan struck against it?

Answer. I Don't know anything about it.

Cross-interrogatory 5th. Can you say which it was st'uck the pier, the Sheridan or the Reaney?

Answer. It was the barge struck the pier.

Cross-interrogatory 6th. State if you ever saw the barge Reaney, and examined her damages after she was raised.

Answer. I did not.

Cross-interrogatory 7th. If you say you examined the barge after it was raised, state how near you was to it when you examined it.

Answer. I never examined it.

Cross-interrogatory 8th. If you have stated in answer to plaintiff's interrogatories "What became of the barge after she struck the
113 pier," now state how you know what became of the barge; did some one tell you, or what was your information?

Answer. I saw said barge sink, and was on it (or on the deck of it) after it sunk, and worked at it the balance of that night. That is how I know what became of it.

Cross-interrogatory 9th. If you have stated what was the size, model, and to'nage of said barge, state if you measured it to know its size and to'nage, or only guessed at it.

Answer. I have not stated anything about its size, &c.

Cross-interrogatory 10th. How long had you been on the river passing by that pier before said barge struck it?

Answer. I had been running there up and down for five years.

Cross-interrogatory 11th. Did you not see that pier that the barge struck when passing on the river before the collision took place?

Answer. I never noticed it, that I know of.

114 Cross-interrogatory 12th. State how high that pier stood out of the water at the time of the striking, and about how large it was in length & breadth, as near as you can judge.

Answer. I don't know.

Cross-interrogatory 13th. Did not long strings of lumber usually lay next above said pier while you were navigating the river, before the barge struck the pier?

Answer. I think I have noticed logs laying in the bend above that pier.

Cross-interrogatory 14th. Is there not, just a few rods above the pier, a large sand-bar extending from the Iowa shore two or three hundred feet farther than the pier, and which sand-bar, in low stage of the river, is entirely out of water?

Answer. No. It is a little gravel point, visible at low water, but at the lowest water it does not extend out as far as the pier, I think. At that stage of the river it must have been at least 5 or 6 feet under water.

115 Cross-interrogatory 15th. In a low stage of water, would not a vessel have to run in two or three hundred feet towards the Iowa shore from around the point of the sand-bar before it could reach that pier?

Answer. No, it would not.

Cross-interrogatory 16th. Is not the channel of the river at low water at least four or five hundred feet on the outside of that pier toward Illinois shore? Or if it is not that far out, how far is it out beyond the pier?

Answer. My experience is that the channel runs right by the edge of that pier.

Cross-interrogatory 17th. After that pier was erected, and before said barge struck the pier, did not Atlee's rafts of lumber often extend out from fifty to seventy-five feet beyond the pier towards the middle of the river? Or if they did not extend out that far, how far did they extend out beyond the pier?

116 Answer. I don't know anything about Mr. Atlee's rafts.

Cross-interrogatory 18th. If you have stated you ever saw a steamboat run between that pier and the Iowa shore, name what boat it was, and give the date that passage was made.

Answer. I have not so stated.

Cross-interrogatory 19th. You are asked by plaintiffs "What does that pier and each of the piers constitute in that river?" State the number of piers there are in the Upper Mississippi River, and where each one is located, and what each one is used for. We are not inquiring about bridge-piers, but piers in front of mills & in conjunction with log-harbors?

Answer. I have no statistics at hand, and don't know how many there are. I remember one at Alma, and there are some others; but I don't recall any that are so near the channel and so much in the way as those are.

117 Cross-interrogatory 20th. Is not the pier where the barge struck readily seen in day-time several miles both up and down the river from its location?

Answer. It can be seen in day-time for some distance, farther in low than in high water, but can't be seen at night very far without a light on it, and there were no lights there that night.

EDWIN V. HOLCOMBE.

Subscribed & sworn to before me this 22nd day of Dec., A. D. 1871.

RICH'D H. SPENCER.

118 STATE OF MISSOURI,
County of S't Louis, ss:

I, Rich'd H. Spencer, a notary public within and for the county and State aforesaid, do hereby certify that, in pursuance of the annexed stipulation of parties, before me, at the office of Spencer & Hatch, No. 304 Olive street, in the city of S't Louis, county of S't Louis, and State of Missouri, appeared Edwin V. Holcombe, the deponent aforesaid; that he was then and there by me cautioned and duly sworn, according to law, to testify the whole truth, of his knowledge, touching the matter in controversy in the cause aforesaid; that he was then and there examined, and his testimony reduced to writing by me in his presence; that his testimony, so reduced to writing, was then and there read over to said deponent, who was then sworn, and said deposition was subscribed by him in my presence.

And I do further certify that I am not att'y, counsel, or proctor
119 for either of the parties to this suit, nor in any way interested in the result thereof, and said deposition is herewith by me returned.

In witness whereof I hereunto set my hand & affix my notarial seal this 22d day of December, A. D. 1871.

[NOTARIAL SEAL.] RICH'D H. SPENCER,
Notary Public.

120 In the district court of the United States for the district of Iowa.

THE NORTHWESTERN U. P. COMP'Y
vs.
SAMUEL ATLEE. } In admiralty.

The deposition of Frederick Heisel, a witness produced, cautioned,

sworn, and examined before me, Rich'd H. Spencer, a notary public within and for the county of S't Louis and State of Missouri, duly commissioned and qualified, in pursuance of the annexed stipulation of parties, at the office of Spencer & Hatch, No. 304 Olive street, in the city of S't Louis, State aforesaid, on the 26 day of December, A. D. 1871, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon of said day, to be read in evidence in a certain cause now pending in the district court of the United States for the district of Iowa, wherein the Northwestern Union Packet Comp'y is libellant and Samuel Atlee is respondent, on behalf of the libellant.

121 FREDERICK HEISEL, of lawful age, having been by me first duly cautioned, examined, and sworn to testify the whole truth, doth depose and say, in answer to the following interrogatories and cross-interrogatories:

Interrogatory 1st. State your age, place of residence, your business or occupation, and how long you have been engaged in same.

Answer. I am thirty years old; reside in Hamilton, Ohio; am a steamboatman.

Interrogatory 2nd. If, in answer to interrogatory No. 1, you have stated in substance you have been engaged in steamboating, then state upon what waters; and if you say upon the Mississippi River, then state during what years, if at all, you have been engaged in navigating steamboats past the town of Fort Madison, in Iowa.

Answer. Have been steamboating on the Mississippi River and its tributaries; have been navigating past Fort Madison in seasons of 1869, '70, & '71.

122 Interrogatory 3rd. Where were you and how were you engaged, on or about the 23d of April, 1871, when the steamboat Phil Sheridan or barge Jack Reaney ran against a pier or abutment near Fort Madison?

Answer. I was at that time watchman on steamboat Phil Sheridan, and when the accident occurred was on the bow of the steamboat Phil Sheridan.

Interrogatory 4th. If you say you were on board of the steamboat Phil Sheridan at that time, state how you was there employed and whether you then saw what happened.

Answer. I was employed in preparing the torches or standing by to light them, supposing that we would land at Fort Madison, and I saw all that happened.

Interrogatory 4½th. Now, please state which way the Sheridan was going at the time, on which side of the boat the barge Jack Reaney was lashed, what part of the barge struck the pier, which pier it was
123 which was struck, how many piers there are at said place, and all that happened then and there.

Answer. She was going down the stream. The barge was on the starboard side. It was the fore-quarter or little forward of midships that the barge struck. It was in the night and dark, so I could not see, and am not positive whether it was the upper or lower pier. There are two piers there. It was dark, and there was no light on either pier, and none that I saw anywhere except at the mill on the bank, so I saw nothing. The crash was the first I knew of it, and it seemed like everything was wrecked. I started to run over on the barge and found the sacks that were piled up on her deck tumbling over on to the guard of the boat. The men at once commenced lighting the freight off the barge on to the boat, but in a few minutes the barge sunk. The boat

had worked in to near the shore before the barge sunk. All the freight that could be got at was carried off on to the Sheridan, and then the barge was tied to the shore. It took till daylight next morning
124 before we got through and left there.

Interrogatory 5th. What damages, if any, were done to the barge? Describe same, and state the extent of the damages.

Answer. I only know that from the crash it seemed like her whole side was washed in; next morning we felt round with a pole to find some lead that was part of the freight, and I put a pole down through the top of the deck, and it went clear through to the ground, showing that her bottom was broken away also at that point. She was under water so I could not see her injuries.

Interrogatory 6th. What became of the barge after she struck the pier?

Answer. She sunk.

Interrogatory 7th. If you say in answer to the last question that the barge sunk, state what was done, if anything, to prevent her sinking.

Answer. Only what I have stated above. She was crushed in so she could not be kept afloat.

125 Interrogatory 8th. What was the condition of the barge at the time she struck the pier?

Answer. She was sound and in good condition.

Interrogatory 9th. What was the size, model, and ton'age of said barge?

Answer. I don't know, except that she was a model barge.

Interrogatory 10th. What was the condition of the steamboat Phil Sheridan at the time of the said collision?

Answer. She was in good conditon.

Interrogatory 11th. How was said steamboat & barge manned and equipped at the time of the collision?

Answer. They were fully manned and equipped.

Interrogatory 12th. How long before the barge struck the pier was it you saw the pier, if you did see it?

Answer. I did not see it.

Interrogatory 13th. How far off was the barge from the pier when you first saw the pier, if you did see it?

126 Answer. I did not see it.

Interrogatory 14th. What officers were on watch at the time, and what was done to prevent the collision?

Answer. E. V. Holcombe, captain; Cephas B. Goll, pilot; the second mate, John Patten; Frank De Mas, clerk; and myself, were on watch. Just a moment before she struck, I heard the bell ring to stop.

Interrogatory 15th. What time of day or night was it when the collision took place?

Answer. About 10 or 11 p. m.

Interrogatory 16th. State whether there was any light or other signal on the pier which the barge struck at the time of the collision.

Answer. There was no light on or about it; none nearer to it than the one at the mill.

Interrogatory 17th. Where is said pier located, how far below the landing at F't Madison, and how far is the pier out from the bank of the river, on the Iowa side?

127 Answer. It is about a mile below the landing, and I should think 40 to 50 yards out from the bank. There are two piers just below Fort Madison.

Interrogatory 18th. How many piers are there at or near F't Madison?

Of what are they constructed, and state about what is the size of each, and describe their location and how far apart they are.

Answer. They are of wood and stone. There are two piers. Don't know their size; think they are 400 or 500 feet apart.

Interrogatory 19th. How high was the top of the pier which the barge struck above the water at the time of the collision, and how far could it that night be seen?

Answer. It was somewhat above water. Don't know how many feet. It could not be seen far, because there was no light on it.

Interrogatory 20th. How deep was the water around said pier at the time of the collision?

128 Answer. I don't know.

Interrogatory 21st. How deep was the water at that time, between that pier and the Iowa shore—say out one hundred feet from the pier, out towards the Iowa shore?

Answer. I don't know.

Interrogatory 22nd. Where was the channel of the river at that place at the date of the collision, (23d April, 1871,) and how was said piers located, in respect to said channel?

Answer. I don't know; am not a pilot.

Interrogatory 23d. State if you know if steamboats previously ran in the same place and channel where the Sheridan and barge were when the collison took place?

Answer. They did; we always came down on the Iowa side.

Interrogatory 24th. State whether steamboats ran on the inside of that pier, i. e., between it and the Iowa shore, when the water was high, or whether they could have run there?

129 Answer. I don't know.

Interrogatory 25th. What does that pier and each of the piers constitute in that river?

Answer. I suppose they are for the benefit of the mill.

Interrogatory 26th. In what way, if any, does that pier effect the navigation of the river?

Answer. I am not a pilot.

Interrogatory 27th. What way, if any, are the dangers of navigation on said river effected by said piers?

Answer. I suppose the dangers are increased.

Interrogatory 28th. From what port in what State to what port in what State were the Phil Sheridan and barge voyaging at the time of said collision?

Answer. From St. Paul, Minnesota, St. Louis, Missouri.

Interrogatory 29th. What trip of that season was it said boat was then making?

130 Answer. It was the first trip of that season.

Interrogatory 30th. State any other matter or thing of interest to the libellant in this case.

Answer. I know of nothing.

Cross-interrogatories.

Cross-inter'ogatory 1st. Are you a pilot on the Upper Mississippi River; if so, how long have you been so piloting?

Ans. I am not a pilot.

Cross-interrogatory 2nd. How far is the pier in front of Atlee's mill from the Iowa bank of the Mississippi?

Answer. I suppose it is 40 to 50 yards.

Cross-interrogatory 3rd. Is there any water between said pier and the Iowa shore when the river is at its lowest stage?

Answer. I don't know.

Cross-interrogatory 4th. Was not that pier used as a base for
131 a boom which held saw-logs for Atlee's saw-mill when the barge Jack Reaney or Phil Sheridan struck against it?

Answer. I don't know.

Cross-interrogatory 5th. Can you say which it was struck the pier, the Sheridan or the Reaney?

Answer. It was the Reaney.

Cross-interrogatory 6th. State if you ever saw the barge Reaney and examined her damages after she was raised.

Answer. I did not.

C'oss interrogatory 7th. If you say you examined the barge after it was raised, state how near you was to it when you examined it?

Answer. I did not examine it.

Cross-interrogatory 8th. If you have stated in answer to pl'ff's interrogatories, "What became of the barge after she struck the pier," now state how you know what became of the barge; did some one tell you, or what was your information?

132 Answer. I saw her sink and was on her after she sunk.

Cross-interrogatory 9th. If you have stated what was the size, model, & ton'age of said barge, state if you measured it to know its size and tonnage or only guessed at it?

Answer. I did not state its size.

Cross-interrogatory 10th. How long had you been on the river passing by that pier before said barge struck it?

Answer. Two seasons.

Cross-interrogatory 11th. Did you not see that pier that the barge struck, when passing on the river before the collision took place?

Answer. I had seen it, or one of them, before.

Cross-interrogatory 12th. State how high that pier stood out of the water at the time of the striking, and about how large it was in length & breadth as near as you can judge.

Answer. I don't know.

Cross-interrogatory 13th. Did not long strings of lumber usually lay next above said pier, while you were navigating the river, before
133 the barge struck the pier?

Answer. I did not see lumber there before the accident happened, but have since.

Cross-interrogatory 14th. Is there not just a few rods above the pier a large sand-bar extending from the Iowa shore two or three hundred feet farther than the pier, and which sand-bar, in low stage of the river, is entirely out of water?

Answer. I don't know anything about such a sand-bar.

Cross-interrogatory 15th. In a low stage of water, would not a vessel have to run in two or three hundred feet towards the Iowa shore from around the point of the sand-bar, before it could reach that pier?

Answer. I don't know but at that time the water was high enough to go anywhere between banks.

Cross-interrogatory 16th. Is not the channel of the river at low water at least four or five hundred feet on the outside of that pier toward Illinois shore; or if it is not that far out, how far is it out beyond the pier?

134 Answer. I don't know.

Cross-interrogatory 17th. After that pier was erected, and before

said barge struck the pier, did not Atlee's rafts of lumber often extend out from fifty to seventy-five feet beyond the pier, towards the middle of the river; or if they did not extend out that far, how far did they extend out beyond the pier?

Answer. I don't know, but I have never seen any there that extended beyond the pier.

Cross-interrogatory 18th. If you have stated you ever saw a steamboat run between that pier and the Iowa shore, name what boat it was, and give the date that passage was made.

Answer. I have not stated so.

Cross-interrogatory 19th. You are asked by pl'ffs, "What does that pier and each of the piers constitute in that river?" State the number of piers there are in the Upper Miss. River, and where each one is located and what each one is used for; we are not inquiring about bridge-piers, but piers in front of mills and in conjunction with log-harbors.

135 Answer. There are some along the river, but I cannot name their location or number, and they always had lights on them at night.

Cross-interrogatory 20th. Is not the pier where the barge struck readily seen in day-time, several miles both up and down the river from its location?

Answer. It can be seen some distance in day-time, but not at night.

FREDRICK HEISEL.

Subscribed & sworn to before me this 26th day of December, A. D. 1871.

[NOTARIAL SEAL.] R. H. SPENCER,
Notary Public.

136 STATE OF MISSOURI,
County of St. Louis, ss:

I, Rich'd H. Spencer, a notary public within and for the county and State aforesaid, do hereby certify that in pursuance of the annexed stipulation of parties before me, at the office of Spencer and Hatch, No. 304 Olive street, in the city of St. Louis, county of St. Louis, and State of Missouri, appeared Frederick Heisel, the *defendant* aforesaid; that he was then and there by me cautioned and duly sworn according to law to testify the whole truth of his knowledge touching the matter in controversy, in the cause aforesaid; that he was then and there examined, and his testimony reduced to writing by me in his presence; that his testimony so reduced to writing was then and there read over to said deponent, and after being sworn, subscribed by him in my presence.

And I do further certify that I am not attorney, counsel, or proctor for either of the parties to this suit, nor in any way interested in the result thereof, and said deposition is herewith by me returned.

137 In witness whereof I hereunto set my hand and affix my notarial seal at office, No. 304 Olive street, in the city of St. Louis, State aforesaid, this 26th day of December, A. D. 1871.

[NOTARIAL SEAL.] RICH'D H. SPENCER,
Notary Public, St. Louis Co., Mo.

138 In the district court of the United States for the district of Iowa.

THE N. W. U. PACKET COMP'Y
vs.
SAMUEL ATLEE. } In admiralty.

The deposition of Cephas B. Goll, a witness produced, cautioned, sworn, and examined before me, Rich'd H. Spencer, a notary public within and for the county of S't Louis and State of Missouri, duly commissioned and qualified, in pursuance of the annexed stipulation of parties, at the office of Spencer & Hatch, No. 304 Olive s't, in the city of S't Louis, State aforesaid, on the 19th day of February, A. D. 1872, between the hours of eight o'clock in the forenoon and 6 o'clock in the afternoon of said day, to be read in evidence in a certain cause now pending in the district court of the United States for the district of Iowa, wherein the Northwestern Union Packet Co. is libellant and Sam'l Atlee respondent, on behalf of the libellant.

139 CEPHAS B. GALL, of lawful age, having been by me first duly cautioned, examined, and sworn to testify the whole truth, doth depose and say in answer to the following interrogatories and cross-interrogatories:

Interrogatory 1st. State your age, place of residence, your business or occupation, and how long you have been engaged in same.

Answer. My name is Cephas B. Gall; am fifty years of age; am a pilot by profession; reside in S't Louis, Missouri, and have been a pilot for thirty-four years.

Interrogatory 2nd. If in answer to interrogatory No. 1 you have stated, in substance, you have been engaged in steamboating, then state upon what waters; and if you say upon the Mississippi River, then state during what years, if at all, you have been engaged in navigating steamboats past the town *in* Fort Madison, in Iowa.

140 Answer. From 1837 to 1861, with the exception of about two years, I piloted boats upon the Upper Mississippi past the town of Fort Madison. From 1861 till 1869 I piloted on southern waters, with the exception of a few trips past Fort Madison, probably three or four. In 1869, I was engaged the entire year on the Tom Jasper, which made regular ten-day trips from S't Louis to S't Paul. From this time until the time of the collision of the Phil Sheridan, I passed Fort Madison but twice, once up and down; was asleep both times.

Interrog. 3rd. Where were you and how were you engaged on or about the 23d day of April, 1871, when the steamboat Phil Sheridan or barge Jack Reaney ran against a pier or abutment near Fort Madison?

Answer. Was on board the Phil Sheridan and was the pilot at the wheel at the time.

Interrogatory 4th. If you were on board of the Phil Sheridan
141 at that time, state how you was then employed and whether you then saw what happened.

Answer. Was at the wheel at the time and saw all that happened.

Interrogatory 4½. Now, please state which way the Phil Sheridan was going at the time, on which side of the boat the barge Jack Reaney was lashed, what part of the barge struck the pier, which pier it was which was struck, how many piers there are at said place, and all that happened then and there?

Answer. The Sheridan was going down stream on regular trip from S't Paul to S't Louis. The barge Jack Reaney was lashed to the starboard side of the boat. The starboard bow of the barge first struck the pier. It was the upper pier that was struck. There are two piers at that place that I then saw. After the barge struck she run on to the pier until the barge was about amidship. It then slid off the pier, and we backed the stern of the boat up stream into the bank just
142 below the lower pier. The barge sank in 3 or 4 minutes. When about the length of the boat above the upper pier, I saw something dark in front of the boat in the channel and supposed it to be drift; I rang the bell to stop the boat and then to back her, but before the boat could be backed the barge struck as above described.

Interrogatory 5th. What damages, if any, were done to the barge; describe same, and state the extent of the damages.

Answer. I didn't examine the barge after it sank, but should judge from the manner in which it struck and the rapidity with which it sunk that the entire bottom and sides of the barge, as far aft as amidships, were torn out.

Interrogatory 6th. What became of the barge after she struck the pier?

Answer. After we had gotten all the freight off her we could, we shoved her as close to the shore as possible and then fastened her to the shore.

143 Interrogatory 7th. If you say in answer to the last question that the barge sunk, state what, if anything, was done to prevent her sinking.

Answer. Nothing was done, because nothing could be done to keep her from sinking.

Interrogatory 8th. What was the condition of the barge at the time she struck the pier?

Answer. She was in good condition, and had freight on her.

Interrogatory 9th. What was the size, model, and tonnage of said barge?

Answer. She was a model barge, and I should judge from her size and appearance that she would carry from two hundred to two hundred and fifty tons.

Interrogatory 10th. What was the condition of the steamboat Phil Sheridan at the time of the said collision?

Answer. So far as I know, she was in good, sea-worthy condition.

144 Interrogatory 11th. How was said steamboat and barge manned and equipped at the time of the collision?

Answer. They were properly manned and well equipped.

Interrogatory 12th. How long before the barge struck the pier was it you saw the pier, if you did see it?

Answer. About one minute.

Interrogatory 13th. How far off was the barge from the pier when you first saw the pier, if you did see it?

Answer. About two boat's lengths.

Interrogatory 14th. What officers were on watch at the time, and what was done to prevent the collision?

Answer. I do not know, except by knowing the regular watches of the mates and engineers, what officers were on watch at the time. Two bells were rung to avoid the collision, one bell to stop the boat
145 and one to reverse the engines and back her. Both bells were obeyed, but the time was too short.

Interrogatory 15th. What time of day or night was it when the collision took place?

Answer. About eleven o'clock at night.

Interrogatory 16th. State whether there was any light or other signal on the pier which the barge struck at the time of the collision.

Answer. There was no light or any signal on the pier or about it.

Interrogatory 17th. Where is said pier located? How far below the landing at Fort Madison; and how far is the pier out from the bank of the river on the Iowa side?

Answer. I should judge the pier to be about a mile below the landing at Fort Madison, and probably from seventy-five to a hundred feet out from the Iowa side.

Interrogatory 18th. How many piers are there at or near Fort Madi-
son, of what are they constructed, and state about what is the
146 size of each, and describe their location, and how far apart
they are.

Answer. I know of none but the two alluded *two*. They are built of rocks, probably fifteen feet in width and something longer, and about one hundred and fifty yards apart.

Interrogatory 19th. How far was the top of the pier which the barge struck above the water at the time of the collision, and how far could it that night be seen?

Answer. I did not measure it, but should judge it to be then about three feet above the water, and visible that night about two boats' lengths off.

Interrrogatory 20th. How deep was the water around said pier at the time of the collision?

Answer. I should judge about seven (7) feet.

Interrogatory 21st. How deep was the water at that time be-
147 tween that pier and the Iowa shore, say out one hundred feet
from the pier, out towards the Iowa shore?

Answer. I should judge one hundred feet would bring it on the bank, tho' I am not certain, as I never made any measurement; if not a good stage of water, reaches up to the bank.

Interrogatory 22d. Where was the channel of the river at that place at the date of the collision, (23d April, 1871,) and how was said piers located in respect to said channel?

Answer. The channel runs directly past the piers; they are properly within the channel; I have frequently run directly where they stand in low stages of water.

Interrogatory 23d. State, if you know, if steamboats previously ran in the same place and channel where the Sheridan and barge were when the collision took place?

Answer. That was and had been for years the regular channel.

148 Interrogatory 24th. State whether steamboats ran on the inside
of that pier, i. e., between it and the Iowa shore, when the water was high, or whether they could have ran there?

Answer. Not knowing anything of the existence of these piers until the time of the collision, and not knowing exactly their locality, I can only say that, in ordinary stage of water, boats can be run within thirty-five feet of the Iowa shore, all along there, until you reach the gravelly point above. I have run frequently *run* within thirty feet of the Iowa shore along there in low water.

Interrogatory 25th. What does that pier and each of the piers constistitute in that river?

Answer. Obstructions to navigation.

Interrogatory 26th. In what way, if any, does that pier effect the navigation of the river?

149 Answer. Unless kept well lighted, it would dangerously affect navigation.

Interrogatory 27th. What way, if any, are the dangers of navigation in said river affected by said pier?

Answer. The piers are in the channel, and there is great danger of boats running on them; even when lighted there is still danger, since in low water the channel is narrow, and a boat sheering off from the bar on the other side scarcely has room to avoid them.

Interrogatory 28th. From what port in what State to what port in what State were the Phil Sheridan and barge voyaging at the time of said collision?

Answer. From St. Paul, Minnesota, to St. Louis, Missouri.

Interrogatory 29th. What trip of that season was it said boat was then making?

Answer. The first trip.

150 Interrogatory 30th. State any other matter or thing of interest to the libellant in this case.

Answer. I know of nothing but what I have already stated.

Additional interrogatory "*a*." How long have you been licensed to pilot steamers on the Mississippi River, past Fort Madison, and how many years have you been so engaged?

Answer. Have been licensed since the existence of the law requiring pilots to license? I think it was 1852. Have been engaged in piloting past Fort Madison, as before stated, since 1837?

Additional interrogatory "*b*." State if you knew of the existence of the pier at the time of the collision, and why?

Answer. I did not know of the existence of the pier, because I was not on watch when I went up, and heard no one say anything in reference to them. They had been built since I last passed Fort Madison.

151 Additional interrogatory "*c*." If you saw said pier before the barge struck it, what did you do to prevent the collision?

Answer. Rang one bell to stop boat, then one to reverse and back.

Additional interrogatory "*d*." What more than you may have done could have been done to have prevented the collision?

Answer. Nothing more.

Cross-interrogatories.

Cross-interrogatory 1st. Are you a pilot on the Upper Mississippi River? If so, how long have you been piloting?

Answer. I am, and have been since 1837.

Cross-interrogatory 2nd. How far is the pier in front of Atlee's mill from the Iowa bank of the Mississippi?

Answer. I should judge in the neighborhood of a hundred feet.

152 Cross-interrogatory 3d. Is there any water between said pier and the Iowa shore, when the river is at its lowest stage?

Answer. There is.

Cross-interrogatory 4th. Was not that pier used as a base for a boom which held saw-logs for Atlee's saw-mill when the barge Jack Reaney or Phil Sheridan struck against it?

Answer. There was no boom there at the time that I know of.

Cross-interrogatory 5th. Can you say which it was struck the pier, the Sheridan or the Reaney?

Answer. The Reaney.

Cross-interrogatory 6th. State if you ever saw the barge Reaney and examined her damages after she was raised.

Answer. I did not.

Cross-interrogatory 7th. If you *you* examined the barge after it was raised, state how near you was to it when you examined it?

153 Answer. I didn't examine it.

Cross-interrogatory 8th. If you have stated in answer to plaintiff's interrogatories "What became of the barge after she struck the pier," now state, do you know what became of the barge? Did some one tell you, or what was your information?

Answer. I was present and saw it sink.

Cross-interrogatory 9th. If you have stated what was the size, model, and tonnage of said barge, state if you measured it to know its size and tonnage or only guessed at it?

Answer. I only judged from the appearance of the barge.

Cross-interrogatory 10th. How long had you been on the river passing by that pier before said barge struck it?

Answer. I only passed the place, and after the pier was built, and was not on watch at that time, and did not see them.

154 Cross-interrogatory 11th. Did you not see that pier that the barge struck when passing the river before the collision took place?

Answer. I did not.

Cross-interrogatory 12th. State how high that pier stood out of the water at the time of the striking, and about how large it was in length and breadth, as near as you can judge.

Answer. I never measured it, but should judge it to have stood about three feet out of water, to be about twenty feet in length, and fifteen feet in width.

Cross-interrogatory 13th. Did not long strings of lumber usually lay next above said pier while you were navigating the river, before the barge struck the pier?

Answer. There were at times strings of lumber in that neighborhood, but there were always lights on them.

155 Cross-interrogatory 14th. Is there not just a few rods above the pier a large sand-bar extending from the Iowa shore two or three hundred feet further than the pier, and which sand-bar in low stage of the river is entirely out of the water?

Answer. There is a bar or rather gravel'y point a short distance above the pier, but it does not, I think, extend out any further than the pier.

Cross-interrogatory 15th. In a low stage of water would not a vessel have to run in two or three hundred feet towards the Iowa shore from around the point of the sand-bar before it could reach that pier?

Answer. It would not.

Cross-interrogatory 16th. Is not the channel of the river at low water at least four or five hundred feet on the outside of that pier towards Illinois shore, or if it is not that far out, how far is it out beyond the pier?

Answer. The pier stands in the edge of the channel.

156 Cross-interrogatory 17th. After that pier was erected, and before said barge struck the pier, did not Atlee's rafts of lumber often extend out from fifty to seventy-five feet beyond the pier towards the middle of the river, or if they did not extend out that far, how far did they extend out beyond the pier?

Answer. I know nothing of the piers there, nor any rafts.

Cross-interrogatory 18th. If you have stated you ever saw a steam-

boat run between that pier and the Iowa shore, name what boat it was, and give the date that passage was made.

Answer. I myself have passed frequently between where the pier now stands and the Iowa shore, but I don't remember when or with what boats.

Cross-interrogatory 19th. You are asked by plaintiffs "What does that pier and each of the piers constitute in that river?" State the number of piers there are in the Upper Mississippi River, and where each one is located, and what each one is used for. We are not
157 inquiring about bridge-piers, but piers in front of mills and in conjunction with log-harbors.

Answer. There are two piers at Burlington for same purpose; they stand directly above the bridge, and are not in the way of navigation. There are three at Muscatine for same purpose; they are not in the channel, and are no obstruction to navigation. There is one just below the point at Rock Island; it stands close to channel; boats run close to it for the same purpose as Atlee's, that is, booming logs. There is one pier at Winona for same purpose; it also stands just below the town, close to the channel, but not in it. There is one at Alma, for same purpose, at the upper end of town; it stands close to shore, some distance from channel. These are all I can now think of until you get above St. Paul.

Cross-interrogatory 20th. Is not the pier where the barge struck readily seen in day-time several miles both up and down the river from its location?

158 Answer. I should think in day-time it could be seen a short or great distance, according as it was high or low water. In low water much further, as more of it is then visible. In the night-time it would be visible but a very short distance, if an ordinary night, and there was no lights on the pier, as there was certainly none the night of the collision.

C. B. GOLL.

Subscribed and sworn to before me this 19th day of February, A. D. 1872.

[NOTARIAL SEAL.] RICH'D H. SPENCER,
Notary Public.

159 STATE OF MISSOURI,
County of St. Louis, ss:

I, Rich'd H. Spencer, a notary public within and for the county and State aforesaid, do hereby certify that in pursuance of the annexed stipulation of parties, before me at the office of Spencer & Hatch, No. 304 Olive street, in the city of St. Louis, county of St. Louis & State of Missouri, appeared Cephas B. Goll, the deponent aforesaid; that he was then and there by me cautioned and duly sworn according to law to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid; that he was then and there examined, and his testimony reduced to writing in my presence; that his testimony so reduced to writing was then and there read over to said deponent, and after being sworn, subscribed by him in my presence.

And I do further certify that I am not att'y, counsel, or proctor
160 for either of the parties to this suit, nor in any way interested in the result thereof, and said deposition is herewith by me returned.

In witness whereof I hereunto set my hand and affix my notarial seal

at office, No. 304 Olive st., St. Louis, Mo., this 19th day of February, A. D. 1872.

[NOTARIAL SEAL.]

RICH'D H. SPENCER,
Notary Public, St. Louis Co., Mo.

Fee $30.00, paid by Northwestern Union Packet Co.

R. H. SPENCER,
Notary Public.

(Endorsed:) No. G. The Northwestern U. P. Co. vs. Samuel Atlee. Deposition of Edwin V. Holcomb, Frederick Heisel, & Cephas B. Goll, on part of libellant. In the district court of the United States for the district of Iowa. Fee $30.00. Opened & filed March 22, 1872. H. K. Love, clerk, by Erie J. Leech, dep. Filed Oct. 10, 1872. George B. Corkhill, clerk.

161 *Stipulation and interrogatories.*

District court of United States, district of Iowa.

NORTHWESTERN UNION COMPANY, LIBELLANT,
vs.
SAMUEL ATLEE, RESPONDENT.

It is hereby stipulated the libellant in the above-entitled action may take the depositions Uriah Brock, John Goll, and William Gorsuch, at St. Louis, Mo., before C. O. Bishop, or some other notary public, in and for St. Louis County, upon the annexed direct interrogatorie and the cross-interrogatories respondent's att'ys shall file with libellant's att'y, say five days hereafter. Issuance of commission is hereby expressly waived, and said deposition, so far as competent, may be used on the trial of said cause.

December 10, 1871.

HOWELL AND RICE,
Proctors for Libellant.
MCCRARY, MILLER & MCCRARY,
Proctors for Respondent.

162 Direct interrogatories.

Each to be put to each witness.

1. State your age, place of residence, & occupation.

2. If in answer to the last interrogatory you say you are a pilot, please state for how many years you have been engaged in that business, and upon what rivers.

3. State whether you have held a pilot's license to navigate the Upper Mississippi River, and if so, for how many years.

4. State during what particular years you may have been engaged in piloting steamboats on the Mississippi River above St. Louis.

5. State whether you have a personal knowledge of any piers in the Mississippi River at or near a saw-mill just below the town of Fort Madison.

6. If you say you have, state how many piers there are, and
163 whether you ever passed them in the night-time.

7. State whether you ever saw a light upon either prior to 1871.

8. Which of said piers, the upper or the lower, stands out the farthest over towards the Illinois shore?

9. Do you know the exact distance the said piers are apart; if so, state it; if not, state about how far you think they are apart.

10. State now how said piers stand in respect to each other.

11. State whether said piers, or either of them, are submerged at high water?

12. If you have never known the lower pier to be submerged at high water, state how much of same was exposed during high water.

13. State if you know the stage of the water at that point on or about April 23, 1871?

164 14. About how much, if any, of the lower pier was then exposed above the water?

15. Which, if either of said piers, is the highest.

16. At the stage of water in the river on or about the 23 of April, 1871, how far could said piers be seen at about eleven o'clock at night, when there was no moon, by the pilot of a descending boat?

17. State whether you have any personal knowledge of the Iowa shore and the channel of the river from the wharf at Fort Madison down past those piers as same were April, 1871.

18. If you state you have, you will please tell us how the channel ran from the wharf down past the saw-mill of Atlee aforesaid. Please give us general direction as compared with the bank of the river along there.

19. Now please state where the lower pier stands in respect to the channel of the river.

20. Now please state where the upper pier stands in respect to the channel of the river?

165 21. Do you know the exact distance between the lower pier and the wharf at Fort Madison at which steamboats usually land; if you say you do not know the exact distance, please state as nearly as you can the distance.

22. State if you know whether there is a sand-bar making out from the Iowa shore a little ways above the saw-mill aforesaid. If you say there is such a sand-bar, please state how far it is from the sand-bar to the wharf above, and about how far it is from said sand-bar to the lower pier?

23. State, if you know, about how far said sand-bar runs out into the river from the Iowa shore.

24. State about how close steamboats can run to the end of said sand-bar as same is exposed at low water.

25. State about the hight of said sand-bar at low water.

166 26. State what is the perpendicular distance or hight between ordinary low water *low water* and ordinary high water in the Mississippi River.

27. What is the character of the bank of the river along past that saw-mill?

28. If you state an answer to the last question that it is a bluff bank, state how the shore is along there from the foot of the bluff bank to the edge or water-line of the river at ordinary low water, that is, how much of a raise is there from said water-line to the foot of the bluff bank?

29. About how wide is the lower pier, and about how wide is the upper pier?

30. State as nearly as you can how far it is from the outer side of the lower pier to the foot of the bluff bank, (Iowa side,) opposite that pier.

31. State about how deep the water was between the lower pier and the bluff bank opposite it about 23 day of April, 1871.

32. State about how deed the water was on or about 23 day of
167 April, 1871, at the head of and on the outer side of the lower pier.

33. State about how deep the water was on or about the 23d day of April, 1871, at the head and on the outer side of the upper pier.

34. State about how deep the water is around the upper pier when the water is at an ordinary stage, and how deep is the water around the lower pier when the water is at an ordinary stage.

35. State whether or not, shortly prior to the erection of said piers, you may have navigated steamboats over the spot where either of said pier now stands; and if so, which pier?

36. State whether a steamboat at low water passing the sand-bar, (spoken of above,) in the ordinary channel of the river, could run down and strike either the upper or the lower pier without making any turn in towards the Iowa shore.

37. State whether steamboats could run over said sand-bar at high water.

168 38. State whether steamboats at high water can run between either or each of said piers and the bluff bank.

39. State what islands, if any there are in the Mississippi River, at or near said po'nt.

40. If you say there is an island opposite or nearly opposite said sawmill, state its location as nearly as you can in respect to said piers, about the size of said island, and about how wide the river is between the island and the said piers.

41. State whether there is any sand-bar between the island & the said piers, & if so, state the extent of it.

42. What effect, if any, has the said island or sand-bar (if any sand bar there is) upon the channel of the river along past said piers?

43. In what way, if any, does the lower pier affect the navigation of the river?

44. What danger, if any, is thereby caused to steamboats navigating said river?

169 45. In what way, if any, does the upper pier affect the navigation of the river?

46. What danger, if any, is thereby caused to steamboats navigating said river?

47. State whether the perils of navigation are either increased or diminished by the erection of either or both of said piers.

48. State any other matter you may know, & give any other information, at your command, which may be of interest to libellant in this case.

HOWELL & RICE,
Libellant's Att'y.

(Endorsed:) United States district court, Iowa. Northwestern Union Packet Company, libellant, vs. Samuel Atlee, respondent. Stipulation & interrogatories.

170 Cross-interrogatories by respondent to be propounded to each witness.

1. How often, or about how often, have you, as a pilot at the wheel, run or navigated a vessel past Fort Madison within the past two years?

2. Where or between what points have you been navigating vessels, as pilot, the last two years?

3. What vessels have you been managing as pilot, in the time mentioned?

4. If in answer to question 5, direct examination, you have stated you know the piers mentioned personally, please state how long you have known them.

5. Are said piers not conspicuous for a long distance above and below?

6. How far do they stand from, we mean the bank on the Iowa side? State as near as you can.

7. Is there not a sand-bar extending out from the Iowa shore
171 into the river, which in ordinary stage of water reaches beyond those piers?

8. Does not the channel of the river set over diagonally from a point above the upper pier, bearing across & down the stream toward the Illinois shore?

9. In an ordinary stage of water, do boats ever pass between the piers and the mill?

10. If you say you ever saw boats pass between the piers and the mill, state when, what boats, and who was piloting.

11. State, if you can, how near to the pier the current or channel of the river passes.

12. Does not the sand-bar referred to extend out beyond the pier?

13. If you say you have known either of the piers to be submerged in high water, state which one, and when?

14. Do you pretend to swear that either of the piers were submerged on or about April 23, 1871?

172 15. Do you pretend to swear that a boat could be in the channel of the river as it sets across at that point and strike the lower pier? If so, state how.

16. How often have you piloted a boat up and down past that pier prior to the 23d April, 1871, since said pier was erected?

17. How often have you struck upon it?

18. Who was pilot of the steamer at the time the collision in this case took place?

19. How long has he been a pilot on the Upper Mississippi?

20. Who was his third man, or cub?

21. How long had this cub been piloting on the Upper Mississippi?

22. Had he any pilot's license to pilot on the Upper Mississippi at the time of the accident?

23. Was not this cub at the wheel in charge of the vessel at the time of this accident?

173 24. Who was at the wheel, and how do you know?

25. If you have stated, in answer to interrogatory 31 in chief, how deep, or about deep, the water was between the lower pier and the Iowa shore about Ap'l 23, 1871, please state now about how deep the water was above the lower pier, and between the piers on a straight line.

26. How do you know it was the depth you state?

27. Has not the channel of the river changed some in the last 3 years at that point, owing to the sand-bar forming there?

28. If you say in answer to question 36, direct, that a boat passing down the channel of the river at low water could strike either of the piers, please state which pier, and how.

29. Do you pretend to swear that you could be in the channel of the river at that point on the 23 of Ap'l, 1871, passing down, and stri either of those piers; if so, which one?

30. How many feet nearer the Iowa shore is the lower pier than
174 the upper pier? State as near as you can.

31. How does the lower pier effect the navigation of the river, if you have answered in direct ans. 44 it does effect it?

32. Are not those piers erected for the protection of the log-harbor, or boom, of Mr. Atlee's mill?

33. Are there not piers in the river at Keokuk, Muscatine, Davenport, Dubuque, and many other points on said river in connection with mills & log-harbors or booms?

34. Is it not the customary way, from your observation on the river, to secure booms or log-harbors?

35. In whose employ have you been the past two years as pilot?

36. With whom and how often have you been in conversation about your testimony in this case?

McCLEARY, MILLER McCLEARY,
Att'ys for Respondent.

175 In the district court of the United States for the district of Iowa.

THE NORTHWESTERN UNION PACKET COMP'Y, libellant,
vs.
SAMUEL ATLEE, RESPONDENT. } In admiralty.

The deposition of William I. Gorsuch, a witness produced, cautioned, sworn, and examined before me, Rich'd H. Spencer, a notary public within and for the county of St. Louis and State of Missouri, duly commissioned and qualified, pursuance of the annexed stipulation of parties, at the office of Spencer and Hatch, No. 304 Olive street, in the city of St. Louis, State aforesaid, on the 4th day of January, A. D. 1872, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon of said day, to wit, at and after the hours of 10 o'clock, to be read in evidence in a certain cause now pending in the district court of the United States for the district of Iowa, wherein The Northwestern Union Packet Company is libellant, and Sam'l Atlee is repondent, on behalf of the libellant.

176 WILLIAM I. GORSUCH, of lawful age, having been by me first duly cautioned, examined, and sworn to testify the whole truth, doth depose and say in answer to the following interrogatories and cross-interrogatories:

Interrogatory 1st. State your age, place of residence, and occupation.

Answer. My age is 28 years; reside in the city of St. Louis, State of Missouri, and am a steamboat pilot from St. Louis to St. Paul.

Interrogatory 2nd. If in answer to the last interrogatory you say you are a pilot, please state for how many years you have been engaged in that business, and upon what rivers.

Answer. Have been so engaged as pilot for ten years on the Mississippi River.

Interrogatory 3rd. State whether you have held a pilot's license and navigate the Upper Mississippi River; and, if so, for how many years?

Answer. I have held a pilot's license on the Upper Mississippi River for ten years.

Int. 4th. State during what particular years you may have been
177 engaged in piloting steamboats on the Mississippi River above St. Louis?

Ans. I have been so engaged from 1861 to the present time above St. Louis.

Int. 5th. State whether you have a personal knowledge of any piers in the Mississippi River at or near a saw-mill, just below the town of Fort Madison.

Ans. I have.

Int. 6th. If you say you have, state how many piers there are, and whether you ever passed them in the night-time.

Ans. There are two. I have often passed them in the night-time.

Int. 7th. State whether you ever saw a light upon either pier in 1871?

Ans. I did not.

Int. 8th. Which of said piers, the upper or the lower, stands out the furthest over towards the Illinois shore?

Ans. I think the lower one does.

Int. 9th. Do you know the exact distance the said piers are apart? If so, state about how far you think they are apart.

Ans. I judge they are four or five hundred feet, but don't know the exact distance.

Int. 10th. State now how said piers stand in respect to each other.

178 Ans. I think the lower one is nearly in a direct line with the upper, if such line were drawn parallel with the shore.

Int. 11th. State whether said piers, or either of them, are submerged at high water.

Ans. I am pretty sure the lower one is, and at very high water both. The lower one was in the spring of 1871.

Int. 12th. If you have never known the lower pier to be submerged at high water, state how much of same was exposed during high water.

Ans. I can't understand that question.

Int. 13th. State, if you know, the stage of water at that point on or about April 23d, 1871.

Ans. The river was then very high, bank-full.

Int. 14th. About how much, if any, of the lower pier was there exposed above the water?

Ans. There wasn't any, I think. I believe it was covered.

Int. 15th. Which, if either, of said piers is the highest?

Ans. The upper one.

Int. 16th. At the stage of the water in the river on or about the

179 23rd of April, 1871, how far could said piers be seen at about eleven o'clock at night, when there was no moon, by the pilot of a descending boat?

Answer. It could not be seen two hundred feet without there was a light on it.

Int. 17th. State whether you have any personal knowledge of the Iowa shore and the channel of the river from the wharf at Fort Madison down part of those piers, as same were April, 1871.

Ans. I have. The channel ran very close those piers. We always had to be very careful to keep from getting on to them; we would have to let the boat float.

Int. 18th. If you state you have, you will please tell us how the channel ran from the wharf down past the saw-mill of Atlee aforesaid. Please give us general directions as compared with the bank of the river along there.

Ans. After leaving the wharf we had to stand out towards the Illinois shore to about the middle of the river, and then come back towards the depot above the mills until we got close to shore. Then the channel makes a curve, and runs down past the piers, but very near them,

180 until we pass the lower one. Then go down the middle of the river, or make a long crossing toward the Illinois shore.

Int. 19th. Now please state where the lower pier stands in respect to the channel of the river?

Ans. It is right on the edge of the channel; very near in it.

Int. 20th. Now please state where the upper pier stands in respect to the channel of the river.

Ans. It stands the same way as the lower one with respect to the channel.

Int. 21. Do you know the exact distance between the lower pier and the wharf at Fort Madison at which steamboats usually land? If you say you do not know the exact distance, please state as nearly as you can the distance.

Ans. I don't know the exact distance, but think about one mile.

Int. 22. State, if you know, whether there is a sand-bar washing out from the Iowa shore a little way above the saw-mill aforesaid. If you say there is such a sand-bar, please state how far it is from the sand-bar to the wharf above, and about how far it is from said sand-bar to the lower pier.

181 Ans. There is a sand-bar above the upper pier formed in such a way that it makes it very difficult to run down there with the piers in the way. Then it is about three-quarters of a mile below wharf, and runs diagonally down abreast of the piers.

Int. 23. State, if you know, about how far said sand-bar runs out into the river from the Iowa shore.

Ans. I think about one hundred yards.

Int. 24. State about how close steamboats can run to the end of said sand-bar as same is exposed at low water.

Ans. I can't tell.

Int. 25. State about the height of said sand-bar at low water.

Ans. I don't know whether it becomes bare or not at very low water.

Int. 26th. State what is the perpendicular distance between ordinarily low water and ordinary high water in the Mississippi River.

Ans. I suppose about ten or twelve feet, but don't know accurately.

Int. 27th. What is the character of the bank of the river along

182 past that saw-mill?

Ans. It is a bluff bank and gravelly.

Int. 28th. If you state in answer to the last question that it is a bluff bank, state how the shore is along there from the foot of the bluff bank to the edge, or water-line, of the river, at ordinary low water. That is, how much of a raise is there from said water-line to the foot of the bluff bank?

Ans. I think about two or three feet.

Int. 29th. About how wide is the lower pier, and about how wide is the upper pier?

Ans. I don't know.

Int. 30th. State, as nearly as you can, how far it is from the outside of the lower pier to the foot of the bluff bank (Iowa side) opposite that pier.

Ans. I judge somewhere from one hundred and fifty to one hundred and eighty feet.

Int. 31. State about how deep the water was between the lower pier and the bluff bank opposite it, about twenty-third day of April, 1871.

Ans. There must have been six or eight feet of water.

183 Int. 32. State how deep the water was on or about 23 day of

April, 1871, at the head of and on the outer side of the lower pier.

Ans. It must have been eight or nine feet.

Int. 33d. State about how deep the water was on or about the 23 day of April, 1871, at the head and on the outer side of the upper pier.

Ans. I suppose it was about the same as the depth I gave for the lower pier.

Int. 34th. State about how deep the water is around the upper pier when the water is at an ordinary stage, and how deep is the water around the lower pier when the water is at an ordinary stage.

Ans. There must be four or five feet around each of them at an ordinary stage of water.

Int. 35th. State whether or not, shortly prior to the erection of said piers, you may have navigated steamboats over the spot where either of said piers now stand, and, if so, which pier?

184 Ans. I never paid much attention to it then, for there was no difficulty before the piers were built.

Int. 36th. State whether a steamboat at low water passing the sand-bar (spoken of above) in the ordinary channel of the river, could run down and strike either the upper pier or the lower pier without making any turn in towards the Iowa shore.

Ans. She could if she ran away from the bar.

Int. 37th. State whether steamboats could run over said sand-bar at high water.

Ans. They could.

Int. 38th. State whether steamboats at high water can run between either or each of said piers and the bluff bank.

Ans. They could, if there was no obstruction between the piers and the bluff bank.

Int. 39th. State what islands, if any, there are in the Mississippi River at or near said point?

Ans. There are some opposite, that is, toward the Illinois shore.

185 Int. 40th. If you say there is an island opposite, or nearly opposite said saw-mill, state its location as nearly as you can in respect to said piers, about the size of said island, and about how wide the river is between the island and the said pier.

Ans. It is nearly opposite the piers. It is not a very large island, and from it to the piers is about three quarters of a mile, or possibly more.

Int. 41. State whether there is any sand-bar between the island and the said piers; and, if so, state the extent of it.

Ans. None but what is covered by water, I believe, but I am not certain.

Int. 42. What effect, if any, has the said island or sand-bar (if any sand-bar there is) upon the channel of the river, along past said piers.

Ans. They don't have any, for we don't have to go near the island.

Int. 43. In what way, if any, does the lower pier affect the navigation of the river?

Ans. It makes it more dangerous to run; any obstruction is dangerous.

Int. 44. What danger, if any, is thereby caused to steamboats navigating said river?

186 Ans. The only danger is the obstruction thereby caused.

Int. 45th. In what way, if any, does the upper pier affect the navigation of the river?

Ans. It is an obstruction, and therefore increases the dangers of navigation.

Int. 46th. What danger, if any, is thereby caused to steamboats navigating said river?

Ans. They might be blown on to it, or get on to it, if the boat became unmanageable, which is frequently the case, or run on to it in the dark if it was not lighted.

Int. 47th. State whether the perils of navigation are either increased or diminished by the erection of either or both of said piers.

Ans. They are increased; all obstructions placed in the river increase the danger.

Int. 48th. State any other matter you may know and give any other information at your command which may be of interest to libellant in this case.

Ans. The night the barge Jack Reaney sank, I was piloting on the steamer North Western, and I think I passed by the piers, and there, was no light upon either of them. I had often remarked that
187 it was singular they did not put lights on those piers.
After the accident they lighted them.

Cross-interrogatories.

Cross-int. 1st. How often, or about how often, have you, as a pilot at the wheel, run or navigated a vessel past Fort Madison within the past two years?

Ans. I cannot tell, but a great number of times; a part of 1870, June and July, I was on the Rock Island, and then I passed Fort Madison about every forty-eight hours, either up or down.

Cross-int. 2. Where or between what points have you been navigating vessels as pilot the past two years?

Ans. From and to points between St. Louis and St. Paul.

Cross-int. 3. What vessels have you been navigating as pilot in the time mentioned?

Ans. Steamer Annie Johnston, North Western, G. H. Wilson, Rock Island, Mitchell, Minneapolis, Belle of LaCrosse, and perhaps others, I cannot name them all.

188 Cross-int. 4th. If in answer to question 5, direct examination, you have stated you know the piers mentioned personally, please state how long you have known them?

Ans. I have known them since they were built.

Cross-int. 5. Are said piers not conspicuous for a long distance above and below?

Ans. They are from above in the day-time, but not so far from below.

Cross-int. 6th. How far do they stand from the shore, (we mean the bank on the Iowa side;) state as near as you can.

Ans. About one hundred and fifty to one hundred and eighty feet, more or less.

Cross-int. 7th. Is there not a sand-bar extending out from the Iowa shore into the river, which in ordinary stages of water reaches beyond those piers?

Ans. There is.

Cross-int. 8th. Does not the channel of the river set over diagonally, from a point above the upper pier, bearing across and down the stream toward the Illinois shore?

189 Ans. It runs down past the piers and then bears off towards the Illinois shore.

Cross-int. 9. In an ordinary stage of water, do boats ever pass between the pier and the mill?

Ans. No.

Cross-int. 10th. If you say you ever saw boats pass between the piers and the mill, state when, what boats, and who was piloting?

Ans. I never saw any so pass.

Cross-int. 11th. State if you can how near to the pier the channel or the current of the river passes.

Ans. It passes right down past them. They stand in the edge of the channel.

Cross-int. 12th. Does not the sand-bar referred to extend out beyond the piers?

Ans. It does, and makes a boat run down close to the piers.

Cross-int. 13th. If you say you have known either of the piers to be submerged in high water, state which one, and when?

Ans. The lower one was, I think, in the spring of 1871, and I don't know but both were.

Cross-int. 14th. Do you pretend to mean that either of the piers
190 were submerged on or about April 23, 1871?

Ans. I can't say positively.

Cross-int. 15th. Do you pretend to mean that a boat could be in the channel of the river and it sets across at that point and strike the lower pier? If so, state how.

Ans. At that stage of water, she could have been where the piers were without any accident. There was plenty of water there to run anywhere.

Cross-int. 16th. How long have you piloted a boat up and down past that pier prior to the 23 of April, 1871, since said pier was erected?

Ans. A great many times; I can't tell how many times.

Cross-int. 17th. How often have you struck upon it?

Ans. Never.

Cross-int. 18th. Who was pilot of the steamer at the time the collision in this case took place?

Ans. I don't know.

Cross-int. 19th. How long has he been a pilot on the Upper Mississippi?

Ans. I don't know.

Cross-int. 20th. Who was his thirdman or cub?

Ans. I don't know.

191 Cross-int. 21st. How long had this cub been piloting on the Upper Mississippi?

Ans. Don't know anything about a cub.

Cross-int. 22d. Had he any pilot's license to pilot on the Upper Mississippi at the time of the accident?

Ans. I don't know.

Cross-int. 23d. Was not this cub at the wheel in charge of the vessel at the time of the accident?

Ans. I don't know.

Cross-int. 24th. Who was at the wheel, and how do you know?

Ans. I don't know.

Cross-int. 25th. If you have stated in answer to interrogatory 31, in chief, how deep, or about how deep, the water was between the lower pier and the Iowa shore about April 23, 1871, please state now about how deep the water was above the lower pier, and between the piers on a straight line.

Ans. I should think it was four or five feet deep.

Cross-int. 26th. How do you know it was the depth you state?

Ans. I don't actually know it; it is my impression.

192 Cross-int. 27th. Has not the channel of the river changed some in the past three years at that point, owing to the sand-bar forming there?

Ans. It has changed some. It has made closer down on to the piers.

Cross-int. 28th. If you say in answer to question 36, direct, that a boat passing down the channel of the river at low water could strike either of the piers, please state which pier, and how?

Ans. She could strike either pier by the boat's running away from the larboard side.

Cross-int. 29th. Do you pretend to mean that you could be in the channel of the river at that point on the 23d April, 1871, passing down, and strike either of those piers? If so, which one?

Ans. I do. I consider that there was water enough there, at the time, to run anywhere, and if the piers had not been there the boat would not have struck anything.

Cross-int. 30th. How many feet nearer the Iowa shore is the lower pier than the upper pier? State as near as you can.

Ans. I can't say.

193 Cross-int. 31st. How does the lower pier affect the navigation of the river, if you have answered in direct answer 44 it does affect it?

Ans. It increases the danger of navigation for reasons I have already given.

Cross-int. 32. Are not those piers erected for the protection of the log-harbor or boom of Mr. Atlee's mill?

Ans. I judge they are.

Cross-int. 33. Are there not piers in the river at Keokuk, Muscatine, Davenport, Dubuque, and many other points on said river, in connection with mills and log-harbors or booms?

Ans. There are, but none of them are in the way as these are.

Cross-int. 34. Is it not the customary way, from your observation, on the river, to secure booms or log-harbors?

Ans. I don't know whether it is or not.

Cross-int. 35. In whose employ have you been the past two years as pilot?

Ans. Sometimes in the employ of the Northern Line, and sometimes in the employ of the Northwestern Union Packet Company.

Cross-int. 36. With whom, and how often, have you been in conversation about your testimony in this case?

194 Ans. I have not been with anybody.

W. J. GORSUCH.

Subscribed and sworn to before me this 4th day of January, A. D. 1872.

[NOTARIAL SEAL.] RICH'D H. SPENCER,
Notary Public, S't Louis Co., Mo.

195 STATE OF MISSOURI,
County of S't Louis, ss:

I, Rich'd H. Spencer, a notary public within and for the county and State aforesaid, do hereby certify that, in pursuance of the annexed stipulation of parties, before me, at the office of Spencer & Hatch, No. 304 Olive street, in the city of S't Louis, county of S't Louis, State of Missouri, appeared William J. Gorsuch, the deponent aforesaid; that he was then and there by me cautioned & duly sworn according to law to tes-

tify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid; that he was then and there examined and his testimony reduced to writing in his presence; that his testimony so reduced to writing was then and there read over by me to said deponent, who was then sworn, and subscribed by him in my presence.

And I do further certify that I am not attorney, counselor, or proctor for either of the parties to this suit, nor in any way interested in the result thereof, and said deposition is herewith by me returned.

196 In witness whereof I hereunto set my hand and affix my notarial seal this 4th day of January, A. D. 1872.

[NOTARIAL SEAL.] RICH'D H. SPENCER,
Notary Public, S't Louis Co., Mo.

In the district court of the United States for the district of Missouri.

THE NORTHWESTERN UNION PACKET COMP'Y
vs.
SAMUEL ATLEE.

The deposition of John F. Goll, a witness produced, cautioned, sworn, and examined before me, Rich'd H. Spencer, a notary public within and for the county of S't Louis, and State of Missouri, duly commissioned and qualified, in pursuance of the annexed stipulation of parties, at the office of Spencer & Hatch, No. 304 Olive street, in the city of S't Louis, State aforesaid, on the 19th day of January, A. D. 1872, between the hours of eight o'clock in the forenoon and 6 o'clock in the afternoon of said day, to wit, at and before the hour of 10 o'clock,

197 to be read in evidence in a certain cause now pending in the district court of the United States, for the district of Iowa, wherein The Northwestern Union Packet Company is libellant, and Samuel Atlee is respondent, on behalf of the libellant.

198 JOHN F. GOLL, of lawful age, having been by me first duly cautioned, examined, and sworn to testify the whole truth, doth depose and say in answer to the following interrogatories and cross-interrogatories:

Interrogatory 1st. State your age, place of residence, and occupation.

Answer. My age is thirty-six; reside in the city of S't Louis, State of Missouri; occupation a steamboat pilot on the Mississippi River.

Int. 2nd. If, in answer to the last interrogatory, you say you are a pilot, please state for how many years you have been engaged in that business, and upon what rivers.

Ans. Have been engaged as pilot for 22 years, principally upon the Miss. River.

Int. 3rd. State whether you have held a pilot's license, and navigate the Upper Mississippi River, and, if so, for how many years.

Ans. I have held a pilot's license, and navigate the Upper Mississippi River. Have held a pilot's license for 18 years, or since 1853.

199 Int. 4th. State during what particular years you may have been engaged in piloting steamboats on the Mississippi River above St. Louis.

Ans. From 1849 to 1864 I was engaged in piloting steamboats on the Upper Mississippi River. From 1864 to 1868 I was on the Lower Mississippi. Since 1868 have been, during the steamboating season, employed as pilot on the Upper Mississippi River boats, above St. Louis.

Int. 5th. State whether you have a personal knowledge of any piers on the Mississippi River, at or near a saw-mill just below the town of Fort Madison.

Ans. I have a personal knowledge of piers at or near Atlee's saw-mill, just below said town.

Int. 6th. If you say you have, state how many piers there are, and whether you ever passed them in the night-time.

Ans. There are two piers; I have passed them in the night-time.

Int. 7th. State whether you ever saw a light upon either pier in 1871.

Ans. I never saw a light upon either pier at any time.

200 Int. 8th. Which of said piers, the upper or the lower, stands out the furthest over towards the Illinois shore?

Ans. The lower one stands out the farthest towards the Illinois shore.

Int. 9th. Do you know the exact distance the said piers are apart; if so, state about how far you think they are apart.

Ans. I don't know the exact distance they are apart, but I should think between 300 to 400 feet, perhaps more.

Int. 10th. State now how said piers stand in respect to each other.

Ans. Said piers are not very far apart; the lower one standing further out in the river.

Int. 11th. State whether said piers, or either of them, are submerged at high water.

Ans. I have never seen either of said piers submerged at high water since their completion.

Int. 12th. If you have never known the lower pier to be submerged at high water, state how much of same was exposed during high water.

Ans. About 20 inches or 2 feet of said lower pier.

201 Int. 13th. State, if you know, the stage of water at that point on or about April 23, 1871.

Ans. I know nearly the stage of water at that point in April, 1871. It was about five feet in the raft-channel on the rapids.

Int. 14th. About how much, if any, of the lower pier was then exposed above the water?

Ans. I can't tell. I passed in the night about that time.

Int. 15th. Which, if either, of said piers is the highest?

Ans. The upper one, I think, is the highest.

Int. 16th. At the stage of water in the river on or about the 23rd of April, 1871, how far could said piers be seen at about 11 o'clock at night, when there was no moon, by the pilot of a descending boat?

Ans. If there was wind enough to ruffle the water the pier could be seen; if not, the shade from the shore and bluff would hide it, and it could not be seen.

Int. 17th. State whether you have any personal knowledge of the Iowa shore and the channels of the river from the wharf at Fort

202 Madison down past those piers, as same were April, 1871.

Ans. I have a personal knowledge of the Iowa shore and the channel of the river from the wharf at Fort Madison down past those piers, as same was April, 1871.

Int. 18th. If you state you have, you will please tell us how the channel ran from the wharf down past the saw-mill of Atlee aforesaid. Please give us general direction as compared with the bank of the river along there.

Ans. The channel left the landing and came close down the Iowa shore, close past the bar at the mouth of the creek and close past the piers, until it passed the lower pier some 500 yards, and then crossed over to the Illinois shore.

Int. 19th. Now please state where the lower pier stands in respect to the channel of the river.

Ans. The lower pier stands in the western side of the channel.

Int. 20th. Now please state where the upper pier stands in respect to the channel of the river.

Ans. The upper pier stands in the western side of the channel,
203 a little further off from where the steamboats come.

Int. 21st. Do you know the exact distance between the lower pier and the wharf at Fort Madison at which steamboats usually land? If you say you do not know the exact distance, please state as nearly as you can the distance.

Ans. I don't know the exact distance; I think it is in the neighborhood of a mile.

Int. 22nd. State, if you know, whether there is a sand-bar washing out from the Iowa shore a little way above the saw-mill aforesaid. If you say there is such a sand-bar, please state about how far it is from the sand-bar to the wharf above, and about how far it is from said sand-bar to the lower pier.

Ans. I know there is a small gravel point at the mouth of the creek, but can't tell the distance either to the wharf or to the lower pier.

Int. 23rd. State, if you know, about how far said sand-bar runs out into the river from the Iowa shore.

Ans. I can't say.

204 Int. 24th. State about how close steamboats can run to the end of said sand-bar as same is exposed at low water.

Ans. Steamboats can land at said point at low water.

Int. 25th. State about the height of said sand-bar at low water.

Ans. The last time I saw it it was about four feet above low-water mark.

Int. 26th. State what is the perpendicular distance between ordinary low water and ordinary high water in the Mississippi River.

Ans. I think the rise and fall of the river is between 12 & 13 feet.

Int. 27th. What is the character of the bank of the river along past that saw-mill?

Ans. The bank of the river along past the saw-mill is rocky & gravelly, with a bluff bank below it.

Int. 28th. If you state, in answer to the last question, that it is a bluff bank, state how the shore is along there from the foot of the bluff bank to the edge or water-line of the river at ordinary low water; that is, how much of a raise is there from said water-line to the foot of the bluff bank?

205 Ans. I can't say.

Int. 29th. About how wide is the lower pier, and about how wide is the upper pier?

Ans. I cannot say how wide the piers are.

Int. 30th. State, as nearly as you can, how far it is from the outside of the lower pier to the foot of the bluff bank (Iowa side) opposite that pier.

Ans. I should think about 150 feet.

Int. 31st. State about how deep the water was between the lower pier and the bluff bank opposite it about 23rd day of April, 1871.

Ans. I think it was about 5½ to 6 f't deep, perhaps a little more; I did not sound it.

Int. 32nd. State about how deep the water was about 23d day of April, 1871, at the head of and on the outer side of the lower pier.

Ans. About 12 feet, I should judge; I never measured it.

Int. 33d. State about how deep the water was on or about the 23d day of April, 1871, at the head and on the outer side of the upper pier.

206 Ans. About 13 feet, I should judge; I never measured it.

Int. 34th. State about how deep the water is at an ordinary stage, and how deep is the water around the lower pier when the water is at an ordinary stage.

Ans. I cannot tell.

Int. 35th. State whether or not, shortly prior to the erection of said piers, you may have navigated steamboats over the spot where either of said piers now stand, and, if so, which pier?

Ans. I have navigated steamboats over the spot where both of said piers stand.

Int. 36th. State whether a steamboat at low water, passing the sand-bar (spoken of above) in the ordinary channel of the river, could run down and strike either the upper or the lower pier without making any turn in towards the Iowa shore.

Ans. It could not; at low water, in the ordinary channel, a steamboat would have to make a turn round the shore or gravel-bar in order to miss the outside bar.

207 Int. 37th. State whether steamboats could run over the gravel or sand bar at high water.

Ans. I think a steamboat could run over the gravel or sand bar at high water.

Int. 38th. State whether steamboats at high water can run between either or each of said piers and the bluff bank.

Ans. I think a steamboat can run at high water between the lower pier and the bluff bank, but it would be some trouble.

Int. 39th. State what islands, if any, there are in the Mississippi River at or near said point.

Ans. There are two large islands and one tow-head near said point.

Int. 40th. If you say there is an island opposite, or near'y opposite said saw-mill, state its location as nearly as you can in respect to said piers; about the size of said island and about how wide the river is between the island and the said piers.

Ans. From Atlee's mill to the island, I think, it is about a half-mile. I don't know the size of the island.

208 Int. 41st. State whether there is any sand-bar between the island and the said piers; and if so, state the extent of it.

Ans. There is a sand-bar extending near the Iowa shore which throws the channel of the river close to the Iowa shore and the piers of the mill. I cannot say as to the extent of it.

Int. 42nd. What effect, if any, has the said island or sand-bar, (if any sand-bar there is,) upon the channel of the river along past said piers?

Ans. Said sand-bar has a tendency to throw a boat in close to the Iowa shore.

Int. 43d. In what way, if any, does the lower pier affect the navigation of the river?

Ans. The lower pier is in the way of the navigation of the river.

Int. 44th. What damage, if any, is thereby caused to steamboats navigating said river?

Ans. The same danger as in placing any other obstruction in the river without placing a light upon it.

Int. 45th. In what way, if any, does the upper pier affect the navigation of the river?

Ans. The upper pier I do not think affects the navigation of
209 the river coming down stream. Going up it is in the way.

Int. 46th. What danger, if any, is thereby caused to steamboats navigating said river?

Ans. The same danger as any other obstruction would be.

Int. 47th. State whether the perils of navigation are either increased or diminished by the erection of either or both piers.

Ans. I think the perils of navigation are increased by the erection of said piers. In fact I know it is.

Int. 48th. State any other matter or thing you may know, and give any other information at your command, which may be of interest to libellant in this case.

Ans. I know of nothing more, except that I came very near running the steamboat Alex. Mitchell over the lower pier in April, 1871.

210 Cross-interrogatories.

Cross-int. 1st. How often, or about how often, have you as a pilot at the wheel run or navigated a vessel past F't Madison within the past two years?

Ans. Can't tell; have been past there very frequently.

Cross-int. 2nd. When or between what points have you been navigating vessels as pilot the last two years?

Ans. Between S't Louis, Mo., and S't Paul, Minn.

Cross-int. 3rd. What vessels have you been navigating as pilot in the time mentioned?

Ans. Tom Jasper, Phil Sheridan, Alex. Mitchell, & others.

Cross-int. 4th. If in answer to question 5, direct examination, you have stated you know the piers mentioned personally, please state how long you have known them?

Ans. I have known them since they were placed there.

Cross-int. 5th. Are said piers not conspicuous for a long distance above and below?

Ans. They are in the day-time when you can see them, but not at night.

Cross-int. 6th. How far do they stand from the shore; we mean
211 the bank on the Iowa side? State as near as you can.

Ans. About 150 feet, more or less.

Cross-int. 7th. Is there not a sand-bar extending out from the Iowa shore into the river which in ordinary stage of water reaches beyond those piers?

Ans. There is, above the piers.

Cross-int. 8th. Does not the channel of the river set over diagonally from a point above the upper pier, bearing across down the stream toward the Illinois shore?

Ans. It runs down past the lower pier 100 y'ds or more, and then crosses over to the island on the Illinois shore.

Cross-int. 9th. In an ordinary stage of water do boats ever pass between the piers and the mill?

Ans. Never.

Cross-int. 10th. If you say you ever saw boats pass between the piers and the mill, state when, what boats, and who was piloting?

Ans. I never saw a boat go there.

Cross-int. 11th. State, if you can, how near to the pier the current or channel of the river passes.

Ans. The channel of the river passes very close to the piers. You have to run the piers very close coming down stream.

212 Cross-int. 12th. Does not the sand-bar referred to extend out beyond the pier?

Ans. It does, above the piers.

Cross-int. 13th. If you say you have known either of the piers to be submerged in high water, state which one, and when.

Ans. The lower one might have been in 1871, but I did not see it. I passed it in the night time, at the highest water there was that year.

Cross-int. 14th. Do you pretend to swear that either of the piers were submerged on or about April 23, 1871?

Ans. I can't say positively.

Cross-int. 15th. Do you pretend to swear that a boat could be in the channel of the river, as it sets across at that point, and strike the lower pier? If so, state how.

Ans. The boat might become unmanageable, and coming in contact with shoal water on the outside and running off towards the pier.

Cross-int. 16th. How often have you piloted a boat up and down past that pier prior to the 23 April, 1871, since said pier was erected?

Ans. I cannot tell the number of times I have passed it, but quite often.

Cross-int. 17th. How often have you struck upon it?

213 Ans. I never struck it at all.

Cross-int. 18th. Who was pilot of the steamer at the time the collision in this case took place?

Ans. I don't know.

Cross-int. 19th. How long had he been a pilot on the Upper Mississippi?

Ans. I do not know.

Cross-int. 20th. Who was his third-man, or cub?

Ans. I don't know.

Cross-int. 21st. How long had this cub been piloting on the Upper Mississippi?

Ans. I don't know.

Cross-int. 22nd. Had he any pilot's license to pilot on the Upper Mississippi at the time of the accident?

Ans. I don't know.

Cross-int. 23rd. Was not this cub at the wheel in charge of the vessel at the time of the accident?

Ans. I don't know.

Cross-int. 24th. Who was at the wheel, and how do you know?

Ans. C. B. Goll told me he was at the wheel.

Cross-int. 25th. If you have stated, in answer to interrogatories 31, in chief, how deep, or about how deep the water was between the

214 lower pier and the Iowa shore, about April 23, 1871, please state now about how deep the water was above the lower pier, and between the piers on a straight line?

Ans. I don't know.

Cross-int. 26th. How do you know it was the depth you state?

Ans. I have not stated.

Cross-int. 27th. Has not the channel of the river changed some in the past three years at that point, owing to the sand-bar forming there?

Ans. It has changed. It changes every time the river rises & falls, more or less.

Cross-int. 28th. If you say, in answer to question 36 direct, that a boat passing down the channel of the river, at low water, could strike either of the piers, please state which pier, and how?

Ans. She could strike either pier.

Cross-int. 29th. Do you pretend to swear that you could be in the channel of the river at that point, on the 23d of April, 1871, passing down, and strike either of those piers? If so, which one?

Ans. Could strike both of them at that time.

215 Cross-int. 30th. How many feet nearer the Iowa shore is the lower pier than the upper pier? State, as near as you can.

Ans. I can't say.

Cross-int. 31st. How does the lower pier affect the navigation of the river, if you have answered, in direct answer 44, it does affect it?

Ans. The danger of navigation of the river is increased same as any other obstruction.

Cross-int. 32d. Are not those piers erected for the protection of the log-harbor or boom of Mr. Atlee's mill?

Ans. I don't know.

Cross-int. 33d. Are there not piers in the river at Keokuk, Muscatine, Davenport, Dubuque, and many other points on said river, in connection with mills and log-harbors or booms?

Ans. There are; but only one that I know of in the way, and that one is at Winona, and has been lighted ever since it was erected.

Cross-int. 34th. Is not the customary way, from your observation on the river, to secure booms or log-harbors?

Ans. It is.

216 Cross-int. 35th. In whose employ have you been the past two years as pilot?

Ans. In the Northern Line, in the Northwestern Union Packet Company, and other parties.

Cross-int. 36th. With whom and how often have you been in conversation about your testimony in this case?

Ans. I have had no conversation with any one.

JOHN F. GOLL,

Subscribed and sworn to before me this 19th day of January, A. D. 1872.

[NOTARIAL SEAL.] RICH'D H. SPENCER,
Notary Public.

217 STATE OF MISSOURI,
County of St. Louis, ss:

I, Rich'd H. Spencer, a notary public within and for the county and State aforesaid, duly commissioned and qualified, do hereby certify that in pursuance of the annexed stipulation of parties before me, at the office of Spencer & Hatch, No. 304 Olive s't, in the city of S't Louis, county of S't Louis, & State of Missouri, appeared John F. Goll, the deponent aforesaid; that he was then & there by me cautioned and duly sworn, according to law, to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid; that he was then and there examined, and his testimony reduced to writing by me in his presence; that his testimony, so reduced to writing, was then and there read over by me to said deponent, who was then sworn, and the said deposition was subscribed by him in my presence.

And I do further certify that I am not att'y, counselor, or proc-
218 tor for either of the parties to this suit, nor in any way interested in the result thereof; and said deposition is herewith by me returned.

In witness whereof I hereunto set my hand and affix my notarial seal

at office, No. 304 Olive s't, in the city of S't Louis, Mo., this 19th day of January, A. D. 1872.

[NOTARIAL SEAL.]

RICH'D H. SPENCER,
Notary Public, S't Louis Co., Mo.

(Endorsed:) No. I. The Northwestern Union Packet Company vs. Samuel Atlee. Depositions of William I. Gorsuch & John Goll on part of libellant. In the district court of the United States for the district of Iowa. In admiralty. Fee $20. Opened & filed March 22, 1872. H. K. Love, clerk, by Erie J. Leech, dep. Filed Oct. 10, 1872. George B. Corkhill, clerk.

219 [John M. Ballou, 110 Main street.]

DUBUQUE, IOWA, *Dec.* 19, 1871.

MESS. HOWELL & RICE,
Keokuk, Iowa:

GENTLEMEN: Mr. Patten came to Dubuque the 18th inst., & I took the deposition, case N. W. U. P'k' Co. vs. Atlee. Through an oversight I failed to attach my seal (notarial) to the certificate. If att'y for Atlee will not consent that dep's can be used without seal, return same to me and I will correct same.

Respectfully, yours,

JOHN M. BALLOU.

We waive all objection on account of the omission to attach seal, as above referred to, in the deposition.

Dec. 22, '71.

McCRARY, MILLER & McCRARY.

220 In district court of United States, district of Iowa. In admiralty.

THE NORTHWESTERN UNION PACKET CO., libellant,
vs.
SAMUEL ATLEE, RESPONDENT.

Pursuant to the annexed stipulation, I caused John Patten to come before me at my office in the city of Dubuque, Iowa, on the 16th day of December, 1871, at 9 o'clock a. m., as a witness on the part of libellant in the above cause, and the said John Patten, being first duly sworn by me to testify the truth, the whole truth, & nothing but the truth, testifies as follows:

1. State your name, place of residence, your business or occupation, & how long you have been engaged in same.

Ans. My name is John A. Patten; residence, Apple River, Illinois, & occupation, mating; have been 10 (ten) years acting as mate on steamboats on Mississippi River, and have been employed otherwise on steamboats on Mississippi River six years more.

2d. If, in answer to interrogatory No. 1, you have stated in substance you have been engaged in steamboating, then state upon what waters, and if you say upon the Mississippi River, then state during
221 what years, if at all, you have been engaged in navigating steamboats past the town of Fort Madison, in Iowa.

Ans. During the past sixteen years or seasons, I have been engaged steamboating on the Mississippi River, and during the past four years or seasons for navigation, I have been engaged in navigating steamboats past the town of Fort Madison, in Iowa. During the four past years we have not been able to run the entire season past Fort Madison, except one season year before last, when we ran the entire season.

3. Where were you, and how were you engaged, on or about the 23d April, 1871, when the steamboat Phil Sheridan, a barge, Jack Reaney, ran against a pier or abutment near Fort Madison?

Ans. I was on the steamboat Phil Sheridan, on the guard on starboard side, on watch, on April 23, 1871, or about that day, when the barge Jack Reaney ran against the pier or abutment near Fort Madison.

4. If you say you were on board of the steamboat Phil Sheri-
222 dan at that time, state how you was then employed, and whether you then saw what happened.

Ans. I was a watch at that time; was transferring freight from the steamboat to the barge, in order to lighten the Phil Sheridan to go over the rapids. I saw what happened in striking the pier.

5. Now, please state which way the Sheridan was going at the time, in which side of the boat the barge Jack Reaney was lashed, what piers there are at said place, which one, if either, was struck by the barge, what part of the barge struck the pier, and all that happened then and there.

Answer. The Sheridan was going down the river to St. Louis at that time. The barge Jack Reaney was lashed to the starboard side of the steamboat. I did not know, until we struck, that there were any piers there. I saw the pier we struck when we were about twenty feet from it. The next morning I saw there were two piers. I cannot say which pier we struck. In the morning I saw the two piers above us.
223 The barge was struck about amidship, on her side. I saw the pier when about twenty feet from the barge. The steamboat was shoving off from it at the time I first noticed it. As soon as I saw the pier, I says to the watchman, "What is that in the river? we are going to strike it." She struck the pier before I had finished saying it. The watchman and myself at once jumped over on to the barge, and saw that she was sinking. I called to the captain, "The barge is sinking," and commenced getting the freight off the barge with the men as fast as possible. Before I could get much freight off the barge, we had to cut her loose from the steamboat, as she was sinking so fast, and was listing the steamboat over. The barge was about two hundred feet below the pier when we got the lines off from her. The barge was almost at the bottom when we got the lines off. She sunk in six feet of water. The water was about eighteen inches over her deck amidships. The stern-end of the barge was a little up. I think the barge sunk to the bot-
224 tom within three minutes after she struck the pier. As soon as the barge was cut off, the steamboat was swung around and headed up stream by the side of the barge, and we got off from the barge all the freight we could.

6th. What damages, if any, were done to the barge? Describe same, and state the extent of the damage.

Answer. The whole side of the barge was stove in. I think about forty feet of her side was stove in, and the entire barge was knocked out of shape.

7. What became of the barge after she struck the pier?

Ans. She sunk immediately, and we left her there the next morning after getting off what freight we could, and making her fast.

8. If you say, in answer to the last question, that the barge struck, state what, if anything, was done to prevent the barge sinking.

Ans. She sunk so quick we could not do anything.

9. What was the condition of the barge at the time she struck the pier?

225 Answer. She was in splendid good order—one of the nicest barges that eve' was loaded, I think.

10. What was the size, mod*le*, and ton'age of said barge?

Answer. I don't know the size or ton'age of said barge. She would carry about eight thousand bushels of bulk wheat. She was what I call a good mod*le* barge.

11. What was the condition of the st'b't Phil Sheridan at the time of the said collision?

Ans. She was in good order.

12. How was said steamboat & barge manned and equipped at the time of the collision?

Ans. She was fully manned and equipped. She had one of the best and most experienced captains on the river, and I say the same of the pilot.

13. How long before the barge struck the pier was it you saw the pier, if you did see it?

Ans. I don't think it was a minute. It was almost immediately.

14. How far off was the barge from the pier when you first saw the pier, if you did see it?

Ans. About twenty feet—not over.

15. What officers were on watch at the time, and what was done to prevent the collision?

226 Ans. Captain E. V. Holcomb, Pilot-Captain Seple Goll, & I was on watch as mate. I don't know which engineer was on watch. The first I saw was the boat shoving off from the pier.

16. What time of day or night was it when the collision took place?

Ans. I think about nine o'clock at night.

17. State whether there was any light or other signal on the pier at the time of the collision.

Ans. There was no light or signal on the pier at the time.

18. Where is said pier located? How far below the landing at F't Madison, and how far is the pier which was struck by the barge out from the bank of the river on the Iowa side?

Ans. The piers, I should say, are about three-quarters of a mile below the steamboat landing at F't Madison. I think the piers are from 150 to 200 feet from the Iowa bank of the river.

19. Of what is the pier constructed, and state about what is its size?

Ans. The pier we struck, I think, was made out of square timber. It is sharp at the upper end, but come think, I can't say that it is. I think it was about 12 feet long. I simply looked at it as we passed.

227 20. How high was the top of the pier above the water at the time of the collision, and how far could it then, that night, be seen?

Ans. I suppose the top of the pier was about eight feet above the water; that is my recollection. I can't say how far it could be seen that night.

21. How far was the water around said pier at the time of the collision?

Ans. I don't know; it was the old steamboat channel.

22d. How deep was the water at that time between the pier and the

Iowa shore, say out one hundred feet from the pier, out towards the Iowa shore?

Ans. I could not say.

23. Where was the channel of the river at that—at the date of the collision, 23 April, 1871; and how was said pier located in respect to said channel?

Ans. The channel of the river was right down where we ran; the pier was located in the channel.

24. State, if you know, if steamboats previously ran in the
228 same place and channel where the Sheridan and barge were when the collision took place.

Ans. They did.

25. State whether steamboats ran on the inside of that pier, i. e. between it and the Iowa shore, where the water was high; or whether they could have run there.

Ans. Before the piers were built they used to run down that shore. In high water steamboats could run between that pier and the Iowa shore if there were no obstructions in shape of rafts.

26. What does each or either of those piers constitute in that river?

Ans. They are an obstruction to the navigation of the river.

27. In what way, if any, does that pier effect the navigation of the river?

Ans. It is in the channel, in the way of boats.

28. What way, if any, are the dangers of navigation in said river affected by said pier?

Ans. There is greater danger in navigating boats.

229 29. From what port in what State to what port in what State were the Phil Sheridan and barge voyaging at the time of said collision?

Ans. From S't Paul, in Minnesota, to S't Louis, in State of Missouri.

30. What trip of that season was it said boat was then making?

Ans. On her first trip of the season.

31. State any other matter or thing of interest to the libellant in this case.

Ans. I think of nothing else.

1. How do you know what became of the barge after she struck the pier? Tell where you got your information.

Ans. I don't know what you mean; I saw it happen.

2nd. Who was at the wheel, controlling the navigation of the Phil Sheridan, at the time the barge struck the pier?

Ans. Captain Gall.

3d. How far could said pier be seen in daylight, above and below, from the Mississippi River?

230 Ans. I suppose you could see it about a mile from below, and possibly two miles above, in daylight.

4. Could not said pier be seen several miles, in daylight, from a steamboat either assending or descending the river?

Ans. I don't think it could.

5. Is there not a sand-bar a short distance above said pier, extending out from the Iowa shore further into the river than the said pier, and which is entirely dry in low stage of Mississippi?

Ans. No; I never seen that sand-bar. We always run down before where the piers are on that shore.

6. When was that pier put up?

8. If you say, in answer to the last question, that the barge struck, state what, if anything, was done to prevent the barge sinking.

Ans. She sunk so quick we could not do anything.

9. What was the condition of the barge at the time she struck the pier?

225 Answer. She was in splendid good order—one of the nicest barges that eve' was loaded, I think.

10. What was the size, mod*le*, and ton'age of said barge?

Answer. I don't know the size or ton'age of said barge. She would carry about eight thousand bushels of bulk wheat. She was what I call a good mod*le* barge.

11. What was the condition of the st'b't Phil Sheridan at the time of the said collision?

Ans. She was in good order.

12. How was said steamboat & barge manned and equipped at the time of the collision?

Ans. She was fully manned and equipped. She had one of the best and most experienced captains on the river, and I say the same of the pilot.

13. How long before the barge struck the pier was it you saw the pier, if you did see it?

Ans. I don't think it was a minute. It was almost immediately.

14. How far off was the barge from the pier when you first saw the pier, if you did see it?

Ans. About twenty feet—not over.

15. What officers were on watch at the time, and what was done to prevent the collision?

226 Ans. Captain E. V. Holcomb, Pilot-Captain Seple Goll, & I was on watch as mate. I don't know which engineer was on watch. The first I saw was the boat shoving off from the pier.

16. What time of day or night was it when the collision took place?

Ans. I think about nine o'clock at night.

17. State whether there was any light or other signal on the pier at the time of the collision.

Ans. There was no light or signal on the pier at the time.

18. Where is said pier located? How far below the landing at F't Madison, and how far is the pier which was struck by the barge out from the bank of the river on the Iowa side?

Ans. The piers, I should say, are about three-quarters of a mile below the steamboat landing at F't Madison. I think the piers are from 150 to 200 feet from the Iowa bank of the river.

19. Of what is the pier constructed, and state about what is its size?

Ans. The pier we struck, I think, was made out of square timber. It is sharp at the upper end, but come think, I can't say that it is. I think it was about 12 feet long. I simply looked at it as we passed.

227 20. How high was the top of the pier above the water at the time of the collision, and how far could it then, that night, be seen?

Ans. I suppose the top of the pier was about eight feet above the water; that is my recollection. I can't say how far it could be seen that night.

21. How far was the water around said pier at the time of the collision?

Ans. I don't know; it was the old steamboat channel.

22d. How deep was the water at that time between the pier and the

Iowa shore, say out one hundred feet from the pier, out towards the Iowa shore?

Ans. I could not say.

23. Where was the channel of the river at that—at the date of the collision, 23 April, 1871; and how was said pier located in respect to said channel?

Ans. The channel of the river was right down where we ran; the pier was located in the channel.

24. State, if you know, if steamboats previously ran in the
228 same place and channel where the Sheridan and barge were when the collision took place.

Ans. They did.

25. State whether steamboats ran on the inside of that pier, i. e. between it and the Iowa shore, where the water was high; or whether they could have run there.

Ans. Before the piers were built they used to run down that shore. In high water steamboats could run between that pier and the Iowa shore if there were no obstructions in shape of rafts.

26. What does each or either of those piers constitute in that river?

Ans. They are an obstruction to the navigation of the river.

27. In what way, if any, does that pier effect the navigation of the river?

Ans. It is in the channel, in the way of boats.

28. What way, if any, are the dangers of navigation in said river affected by said pier?

Ans. There is greater danger in navigating boats.

229 29. From what port in what State to what port in what State were the Phil Sheridan and barge voyaging at the time of said collision?

Ans. From S't Paul, in Minnesota, to S't Louis, in State of Missouri.

30. What trip of that season was it said boat was then making?

Ans. On her first trip of the season.

31. State any other matter or thing of interest to the libellant in this case.

Ans. I think of nothing else.

1. How do you know what became of the barge after she struck the pier? Tell where you got your information.

Ans. I don't know what you mean; I saw it happen.

2nd. Who was at the wheel, controlling the navigation of the Phil Sheridan, at the time the barge struck the pier?

Ans. Captain Gall.

3d. How far could said pier be seen in daylight, above and below, from the Mississippi River?

230 Ans. I suppose you could see it about a mile from below, and possibly two miles above, in daylight.

4. Could not said pier be seen several miles, in daylight, from a steamboat either assending or descending the river?

Ans. I don't think it could.

5. Is there not a sand-bar a short distance above said pier, extending out from the Iowa shore further into the river than the said pier, and which is entirely dry in low stage of Mississippi?

Ans. No; I never seen that sand-bar. We always run down before where the piers are on that shore.

6. When was that pier put up?

Ans. I don't know that. I never seen it till last spring—the time we struck. It was the first time I ever saw it.

7. You are asked by pl'ff "What that pier, on which said barge struck, constituted in that river." We ask you if it is not a base for a
231 boom for logs or lumber to rest against, to be used by Atlee in his saw-mill near that pier?

Ans. I did not know what it was put out there for.

8. When the river is at its lowest stage and the sand-bar above the pier is bare of water, how far is the channel outside of that pier towards the middle of the river?

Ans. I never saw the sand-bar bare of water.

9. Did not Atlee's saw-logs or rafts often extend further out into the river than said pier before said collision?

Ans. No, sir; not to my knowledge.

10. Is there any particular difference between the Atleee's pier, which he used to protect his lumber, and other piers on the Upper Mississippi River, built by other mill-owners in the Mississippi, but near its shore, for the protection of their lumber?

Ans. I don't know of any one like it. I don't know of any built out like this.

JOHN A. PATTEN.

232 STATE OF IOWA,
Dubuque County, ss:

On this 18th day of December, 1871, the foregoing testimony of John A. Patten having been reduced to writing by me, and read to said witness, he subscribed his name thereto, and made oath that the same was correct and true.

Witness my hand & seal.

JOHN M. BALLOU,
Notary Public.

Witnes', John A. Patten, 37 miles each way	$3 70
2 days	3 00
J. M. Ballou, for taking deposition	7 50
Postage	

233 In D. C. U. S., in admiralty, at Keokuk.

N. W. U. P. Co.
vs.
SAM'L ATLEE.

Cross-interrogatories to be propounded to all of witnesses of plaintiff.

1. How do you know what became of the barge after she struck the pier? Tell where you got your information.
2. Who was at the wheel, controlling the navigation of the Phil Sheridan, at the time the barge struck the pier?
3. How far could said pier be seen, in daylight, above and below, from the Mississippi River?
4. Could not said pier be seen several miles in daylight from a steamboat either assending or descending the river?
5. Is there not a large sand-bar a short distance above said pier, extending out from the Iowa shore further into the river than the

234 said pier, and which is entirely dry in a low stage of the Mississippi?

6. When was that pier put up?

7. You are asked by pl'ff "What that pier, on which said barge struck, constitutes in that river." We ask you if it is not a base for a boom for logs or lumber to rest against, to be used by Atlee in his saw-mill near that pier?

8. When the river is at its lowest stage, and the sand-bar above the pier is bare of water, how far is the channel outside of that pier towards the middle of the river?

9. Did not Atlee's saw-logs or rafts often extend further out into the river than said pier before said *said* collision?

Is there any peculiar difference between the Atlee piers which he uses to protect his lumber and other piers on the Upper Mississippi River, built by other mill-owners in the Mississippi, but near its shore, for the protection of their lumber?

McCREAY, MILLER & McCREAY,
Attorneys for Def't.

235 The questions propounded by plaintiff, so far as they seek the opinion of the witness, are objected to, unless the witness is proved to be an expert.

In the district cour' of United States, district Iowa.

THE NORTHWESTERN UNION PACKET CO., LIBELLANT,
vs.
SAMUEL ATLEE, RESPONDENT. } In admiralty.

Stipulation.

It is hereby agreed that the libellant in the above-named suit may take the deposition of John Patten, at Dubuque, Iowa, before John M. Ballou, or some other notary public in and for Dubuque County, Iowa, upon the annexed direct interrogatories and the cross-interrogatories which respondent's att'ys may deliver to libellant's att'y within days from this date; said deposition to be taken on behalf of said libellant; and the issuance of a commission is hereby expressly waived, and said deposition, so far as competent, may be *and* on the trial of said cause.

May 29, 1871.

HOWELL & RICE,
Att'y for Libellant.
McCRAY, MILLER & McCRARY,
Att'ys for Def't.

236 1. State your age, place of residence, your business or occupation, and how long you have been engaged in same.

2. If in answer to interrogatory No. 1 you have stated in substance you have been engaged in steamboating, then state upon what water; and if you say upon the Mississippi River, then state during what years, if at all, you have been engaged in navigating steamboats past the town of Fort Madison, in Iowa.

3. Where were you and how were you engaged on or about the 23d April, 1871, when the steamboat Phil. Sheridan, or barge Jack Reaney, run against a pier or abutment near Fort Madison?

4. If you say you were on board of the steamboat Phil. Sheridan at

that time, state how you was then employed, and whether you then saw what happened.

5. Now please state which way Sheridan was going at the time;
237 in which side of the boat the barge Jack Reaney was lashed; what piers there are at said place; which one, if either, was struck by the barge; what part of the barge struck the pier, and all that happened then and there.

6. What damages, if any, were done to the barge? describe same, & state the extent of the damages.

7. What became of the barge after she struck the pier?

8. If you say in answer to the last question that the barge struck, state what, if anything, was done to prevent her sinking.

9. What was the condition of the barge at the time she struck the pier?

10. What was the size, mod'l & ton'age of said barge?

11. What was the condition of the st. b't Phil. Sheridan at the time of the said collision?

238 12. How was said steamboat & barge manned and equipped at the time of the collision?

13. How long before the barge struck the pier was it you saw the pier, if you did see it?

14. How far off was the barge from the pier when you first saw the pier, if you did see it?

15. What officers were on watch at the time, and what was done to prevent the collision?

16. What time of day or night was it when the collision took place?

17. State whether there was any light or other signal on the pier at the time of the collision?

18. Where is said pier located, how far below the landing at F't Madison, and how far is the pier which was struck by the barge out from the bank of the river on the Iowa side?

19. Of what is the pier constructed, and state about what is its size.

239 20. How high was the top of the pier above the water at the time of the collision, and how far could it then, that night, be seen?

21. How deep was the water around said pier at the time of the collision?

22. How deep was the water at that time between the pier and the Iowa shore, say out one hundred feet from the pier, out towards the Iowa shore?

23. Where was the channel of the river at that—at the date of collision, (23 April, 1871,) and how was said pier located in respect to said channel?

24. State, if you know, if steamboat' previously ran in the same place and channel where the Sheridan and barge were when the collision took place.

25. State whether steamboat ran in the inside of that pier, i. e. between it and the Iowa shore, when the water was high, or whether they could have run there.

240 26. What does each or either of these piers constitute in that river?

27. In what way, if any, does that pier effect the navigation of the river?

28. What way, if any, are the dangers of navigation in said river affected by said pier?

29. From what port in what State, to what port in what State were the Phil Sheridan and barge voyaging at the time of said collision?

30. What trip of that season was it said boat was then making?

31. State any other matter or thing of interest to the libellant in this case.

HOWELL & RICE,
Proctor for Libellant.

241 (Endorsed:) "B." U. S. dist. c't. Io. Northwestern Union Packet Co., libellant, vs. Sam'l Atlee, resp. Stipulation and interrogatories opened by agreement of parties on file & filed Dec. 22, 1871. H. K. Love, clerk, by Erie J. Leech, dep. Filed Oct. 10, 1872. George B. Corkhill, clerk. Howell & Rice, proctor. U. S. dist. court. N. W. U. Packet Co. against Sam'l Atlee. Deposition of John Patten on part of libellant.

John Patten, witness fees:

Mileage	3 70
2 days	3 00
	6 70
J. M. Ballou, fee	7 50
	$14 20
Postage	15
	14 35

242 District court United States, dist. Iowa.

NORTHWESTERN UNION PACKET CO., LIBELLANTS, *vs.* SAMUEL ATLEE, RESPONDENT. } In admiralty.

Deposition of Frank De Mers, taken before me, a notary public in and for the county of Ramsey, and State of Minnesota, duly appointed for that purpose by virtue of the annexed stipulation, January 18th, A. D. 1872.

FRANK DE MERS, of lawful age, being by me first duly sworn, doth, in answer to the following interrogatories and cross-interrogatories, depose and say:

First interrogatory. State your age, place of residence, your business or occupation; how long you have been engaged in same.

243 Answer. Am 31 years of age; reside in the city of St. Paul, State of Minnesota; am a steamboat-man; have been engaged in that business six years.

Interrogatory second. If ever, how long have you been in steamboats navigating the Mississippi River past the landing Fort Madison, Iowa; and in what capacity?

Answer. Have been engaged in steamboating past the town of F't Madison, Iowa, one year as first clerk on steamers of the Northwestern Union Packet Company.

Interrogatory third. Where were and how were you engaged on or about the 21st of April, 1871, when the steamboat Phil Sheridan and

barge Jack Reaney ran against a pier or abutment near Fort Madison?

Answer. On the 21st day of April, 1871, I was first clerk of steamboat Phil Sheridan.

244 Interrogatory fourth. If you say you were on board the steamboat Phil Sheridan at that time, state whether you saw what then took place.

Answer. I felt and heard the barge Jack Reaney strike the pier, and left the cabin of boat to see what was the matter. When I reached the starboard guard of steamer we were just leaving the pier.

Interrogatory fifth. Now state which way the boat was going at the time on which of the boat was the barge Jack Reaney lashed; what part of the barge struck the pier; what piers there are at said place; which one, if either, was struck by the barge; and state in detail all that then and there happened.

Answer. We were going down stream at the time, having first left Fort Madison on our way for Saint Louis; barge Jack Reaney
245 was in tow on starboard side of *of* boat. Barge Jack Reaney must have struck pier with her bow, or, as we would term it, went head on. There are two piers. Barge Jack Reaney struck the upper one first. Second mate, with deck-hands, were lighting steamboat onto barge when she struck; but, immediately after striking pier, they commenced taking sacks and freight off of barge. Do not think men had taken more than one sack apiece off before they were ordered to jump off of barge onto boat, in order to save themselves, as barge was rapidly sinking; and, before all the men had left the barge, sacks of oats were floating off of the deck of barge.

Interrogatory sixth. State what damages, if any, were done to the barge; describe same, and state the extent of the damages.

Answer. We thought the barge a total wreck, and that the
246 whole bottom was torn off. Would not have given two hundred dollars for the barge. Suppose barge Jack Reaney was worth five thousand dollars before the accident.

Interrogatory seventh. What became of the barge after she struck the pier?

Answer. We towed the barge as close to the Iowa shore as possible, and tied her up. Left her after taking off all the freight we could possibly get off.

Interrogatory eighth. If you say in answer to the last question that the barge struck, state what, if anything, was done to prevent her sinking.

Answer. There was nothing done. Could be nothing done to prevent barge Jack Reaney from sinking; only, as I said before, to take off freight. It was an impossibility to stop up the hole or pump the water out.

247 Interrogatory ninth. What was the condition of the barge at the time she struck the pier?

Answer. Barge Jack Reaney was in good condition when she struck the pier.

Interrogatory tenth. State what was the condition of the st'b't Phil Sheridan at the time of said collision.

Answer. The steamer Phil Sheridan was in good condition at the time of the collision, and fully manned and equipped.

Interrogatory eleventh. How was the steamboat and barge then manned and equipped?

Answer. Steamer Phil Sheridan was well officered and equipped; had

full complement of officers and men, and her equipment was such
248 as required by United States Government laws, rules, and regulations concerning same.

Interrogatory twelfth. How long before the barge struck the pier was it you saw the pier, if you did see it before collision?

Answer. Did not see the pier before the barge struck it.

Interrogatory thirteenth. How far off was the barge from the pier when you first saw it, if you did see it?

Answer. Don't know how far off we were from the pier; did not see pier before we struck it.

Interrogatory fifteenth. What officers were on watch at the time, and what was done to prevent the collision?

Answer. Officers on watch, when we struck the pier, were the captain, Holcombe, 2d Mate John Patten, Pilot C. B. Gall, Watchman
249 Fred Heisel, and one engineer and one striker, and myself, 1st clerk; don't know what was done to prevent the collision.

Interrogatory sixteenth. What time of day or night was it when the collision took place?

Answer. It was between nine and ten o'clock p. m. at night when we struck the pier.

Interrogatory seventeenth. State whether there was any light or other signal on the pier at the time of the collision.

Answer. Don't know whether there was a light on the pier or not at the time of the collision. When I went out I saw no lights on the piers.

Interrogatory eighteenth. Did you ever see a light on either of said piers prior to the said collision?

Answer. Don't remember having ever seen the piers before the collision.

250 Interrogatory nineteenth. State about how far out from the Iowa bluff bank is the pier which was struck located.

Answer. Should judge the pier was about three hundred feet from Iowa shore.

Interrogatory twentieth. What was the stage of the water at the time of the collision, and what was the stage of the water the first half of the month of December, 1871.

Answer. The stage of water was low, as we had to use barges as lighters over rapids at the time of the collision, and the first part of December, 1871, was very low, and frozen over.

Interrogatory twenty-first. How high was the top of the pier above the water at the time of the collision, and how far could it then, that night, be seen?

251 Answer. Should judge the pier was three feet above water at the time of the collision, and could not have been seen more than four hundred feet after knowing what it was and where to look for it, on the night of the collision.

Interrogatory twenty-second. State how deep the water was around, say, outside and inside of the pier which was struck at that time.

Answer. Do not know how deep the water was outside and inside the piers, but there was plenty of water for the Phil Sheridan, drawing four feet.

Interrogatory twenty-third. Where was the channel of the river at that time, (23 April, 1871,) and how was said pier which was struck located in respect to said channel?

Answer. The channel of the river was close to the pier 23 April, 1871.

252 Interrogatory twenty-fourth. State whether loaded steamboats could have run between that pier and the Iowa shore at the time of said collision. Was the water then deep enough, and was the space wide enough?

Answer. There was plenty of water inside of pier struck by barge Jack Reaney for loaded steamboats, and space wide enough.

Interrogatory twenty-fifth. State, if you know, whether steamboats, previous to the time when said pier was placed in said river, ran over the place where said pier is located.

Answer. Do not know whether steamboats run where piers now stand or not before piers were built.

253 Interrogatory twenty-sixth. State, if you know, whether steamboats, at an ordinary stage of water, did or could run where said piers *is* now located, i. e., before the piers w*as* put there.

Answer. Do not know whether steamboats did run, but know they could if piers were never put there.

Interrogatory twenty-seventh. State, if you know, what said piers constitute in that river.

Answer. Suppose the piers were built there to hold boom for logs.

Interrogatory twenty-eighth. In what way, if any, do those piers effect the navigation of the river?

Answer. The piers in question constitute an obstruction to boats by being placed out in the river from Iowa shore in water navigable for steamboats in an ordinary stage of water, and in that way preventing steamboats from running where they otherwise might run.

254 Interrogatory twenty-ninth. What way, if any, are the dangers of navigation of said river effected by said piers?

Answer. There is constant danger of steamboats running against said piers, the piers being dangerous to navigation even in day-time, should there high winds from opposite shore, which winds would carry steamboats against or on the piers.

Interrogatory thirtieth. From what port in what State, to what port in what State, was the Phil Sheridan and barge Jack Reaney voyageing at the time of said collision?

Answer. The steamer Phil. Sheridan and barge Jack Reany was bound from the port of St. Paul to the port of Saint Louis, Mo.

255 Interrogatory thirty-first. What trip of that boat of that season was it she was then making?

Answer. Do not remember what the number of the trip was; think it was her 3d trip.

Interrogatory thirty-second. State any other matter or thing of interest to libellant in this case.

Answer. Do not know of anything else that would be of importance to either party.

Cross-interrogatory first. You know there are no piers in the river near Atlee's mill, don't you?

Answer. I do know there are two piers in the river near Atlee's mill.

Cross-interrogatory second. You knew, before said barge struck, that those piers had been there for months, did you not?

256 Answer. I never knew there were piers there before barge Jack Reaney struck one of them.

Cross-interrogatory third. You know, too, that the barge struck the upper pier and floated down and struck the second pier, don't you?

Answer. Do not know whether we struck both piers or not, or struck the lower one after striking the upper one.

Cross-interrogatory fourth. Did you see those two piers whenever you passed there on the river? Or if you did not why did you not?

Answer. I saw the piers several times after the collision, when passing them, but never before; was not looking for piers there before the barge Jack Reaney collided with it.

257 Cross-interrogatory fifth. Don't you know that there is large sand-bar jutting out from the Iowa shore above the upper pier, and extending into the river further than the upper pier?

Answer. Do not know that a large sand-bar juts out from the Iowa shore above the upper pier, that extends out into the river further than the pier.

Cross-interrogatory sixth. Were not those piers known to all navigators of the Mississippi River passing them?

Answer. Do not know whether the piers were known to all navigators of the Mississippi River passing them. Should judge not.

Cross-interrogatory seventh. Don't you know that the sand-bar referred to in question five is always bare in low water; and if

258 bare, how could the channel of the river be where the piers stand, just below the sand-bar? Explain how the channel could be there.

Answer. Don't know how the channel could be just below the said bar, but do know that the channel of the river generally follows just below, or, as we term it, under the bar.

Cross-interrogatory eighth. Do you mean to swear that the channel of the Mississippi, in a low, ordinary stage of water, is where those piers stand?

Answer. I mean to swear that I think the piers in question stand in the best water.

Cross-interrogatory ninth. How long had those piers been there before the barge struck one of them?

Answer. I cannot tell how long the piers had been there be-

259 fore the barge struck.

Cross-interrogatory tenth. Which pier did the barge strike? Speak from what you saw and not from what others may have told you.

Answer. The barge Jack Reaney struck the upper pier.

Cross-interrogatory eleventh. Do you mean to say that steamboats can run between those piers and the Iowa shore in an ordinary or middle stage of water?

Answer. Steamboats can run between the piers and the Iowa shore by keeping close to the piers, in an ordinary good stage of water.

Cross-interrogatory twelfth. If you shall have answered to questions of plaintiff, that a steamboat can run between the piers and the Iowa shore in a high stage of water, then answer whether a steam-

260 boat cannot run over the Iowa shore if there is a flood of water to carry it there.

Answer. If there was a flood of water of enough volume, steamboats could run over the banks of the Iowa shore if saw-mills and houses were taken out of the way.

FRANK D. MEUS.

261 STATE OF MINNESOTA,
County of Ramsey, ss:

I, Warren H. Mead, a notary public in and for the county of Ramsey, and State of Minnesota, duly appointed for that purpose, as set forth in the annexed agreement, hereby certify that Frank DeMers was by me first solemnly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition subscribed by him as above set forth

was reduced to writing by myself in the presence of said witness; that the whole of said deposition was read over to said witness, and was by him subscribed and sworn to in my presence, and at the time and place in said agreement specified, to wit, on the 18th day of January, A. D. 1872.

Witness my hand and notarial seal this 18 day of Jan'y, A. D. 1872.

[NOTARIAL SEAL.] WARREN H. MEAD,
Notary Public, Ramsey Co., Minn.

262 *Fees.*

Notary public fees for taking foregoing depositions: 27 folios of testimony taken, at 15 c'ts per folio	$4 05
One oath administered	25
Certificate	15
Filing stipulation and direct & cross-interrogatories, 5 c'ts each.	10
By attaching same to deposition, certificate of return	50
	$5 05
Witness fees: One day's attendance	1 50
	$6 55

The above fees, $6.55, was paid by libellant, Northwestern Union Packet Company.

WARREN H. MEAD,
Notary Public, Ramsey Co., Minn.

263 NORTH W. U. PACKET COM.
vs.
S. ATLEE.

Cross-questions in behalf of def't.

1. You know there are two piers in the river near Atlee's Mill, don't you?
2. You knew before said barge struck that those piers had been there for months, did you not?
3. You know, too, that the barge struck the upper pier and floated down and struck the lower pier, don't you?
4. Did you see those two piers whenever you passed them on the river? Or if you did not, why did you not?
5. Don't you know that there is a large sand-bar jutting out from the Iowa shore, above the upper pier, and extending into the river further than the upper pier?
6. Were not those piers known to all navigators of the Mississippi River passing there?

264 7. Don't you know that the sand-bar referred to in question five is always bare in low water? And if bare, how could the channel of the river be where the piers stand, just below the sand-bar? Explain how the channel could be there.

8. Do you mean to swear that the channel of the Mississippi in a low or ordinary stage of water is where those piers stand?
9. How long had those piers been there before the barge struck one of them?

10. Which pier did the barge strike? Speak from what you saw, and not from what others may have told you.

11. Do you mean to say that steamboats can run between those piers and the Iowa shore in an ordinary or middle stage of water?

12. If you shall have answered to question of plaintiff, that a steamboat can run between the piers and the Iowa shore in a high stage
265 of water, then answer whether a steamboat cannot run over the Iowa shore, if there is a flow of water to carry it there.

McCRARY, MILLER AND McCRARY,
For Def'ts.

266 District court United States, dist. Iowa.

NORTHWESTERN UNION PACKET CO., LIBEL'ANT,
vs.
SAMUEL ATLEE, RESPONDENT. } In admiralty.

Stipulation.

It is hereby agreed that the libellant in above-named action may take the deposition of Frank DuMers at S't Paul, Minnesota, before Warren H. Mead, or some other notary public in and for Ramsey County, Minnesota, upon the annexed direct interrogatories, and the cross-interrogatories attached, for respondent may deliver to libel'ant's att'ys within 5 days from date, & that said deposition, (taken on behalf of libel'ant,) so far as competent, may be used as testimony on trial of said case; the issuance of a commus is waived.

Dec. 22, 1871.

HOWELL & RICE,
Att'ys for Libel'ant.

267 Direct interrogatories.

1. State your age; place of residence; your business or occupation; how long you have been engaged in same.

2. If ever, how long, have you been engaged on steamboats navigating the Mississippi River past the town of Fort Madison, Iowa, & in what capacity?

3. When were and how were you engaged on or about the 21st April, 1871, when the steamboat Phil Sheridan & barge Jack Reaney ran against a pier or abutment near Fort Madison?

4. If you say you were on board the steamboat Phil Sheridan at that time, state whether you saw what then took place.

5. Now state which way the boat was going at the time; on which of the boat was the barge Jack Reaney lashed; what part of the barge struck the pier; what piers there are at said place; which one, if either, was struck by the barge, and state in detail all that then and there
268 happened.

6. State what damages, if any, were done to the barge; describe same, & state the extent of the damages.

7. What became of the barge after she struck the pier?

8. If you say in answer to the last question that the barge struck, state what, if anything, was done to prevent her sinking.

9. What was the condition of the barge at the time she struck the pier?

10. State what was the condition of the s't'b't Phil Sheridan at the time of s'd collision.

11. How was the steamboat and barge then manned and equipped?

12. How long before the barge struck the pier was it you saw the pier, if you did see it before collision?

269 13. How far off was the barge from the pier when you first saw it, if you did see it?

15. What officers were on watch at the time and what was done to prevent the collision?

16. What time of day or night was it when the collision took place?

17. State whether there was any light or other signal on the pier at the time of the collision.

18. Did you ever see a light on either of said piers prior to the said collision?

19. State about how far out from the Iowa bluff-bank is the pier which was struck located.

20. What was the stage of the water at the time of the collision, and what was the stage of the water the first half of the month of December, 1871?

270 21. How high was the top of the pier above the water at the time of the collision, and how far could it then, that night, be seen?

22. State how deep the water was around, say, outside & inside of the pier which was struck at that time.

23. Where was the channel of the river at that time, (23 April, 1871,) and how was said pier which was struck located in respect to said channel?

24. State whether ladened steamboats could have run between that pier & the Iowa shore at the time of said collision; was the water then deep enough and was the space wide enough?

25. State, if you know, whether steamboats previous to the time when said pier was placed in said river ran over the place *ran over the place* where said pier is located.

271 26. State, if you know, whether steamboats at an ordinary stage of water did or could run where said piers is now located, i. e., before the piers was put there.

27. State, if you know, what said piers constitute in that river.

28. In what way, if any, do those piers effect the navigation of the river?

29. What way, if any, are the dangers of navigation of said river affected by said piers?

30. From what port, in what State, to what point, in what State, were the Phil Sheridan & barge Jack Reaney voyaging at the time of said collision?

31. What trip of that boat of that season was it she was then making?

32. State any other matter or thing of interest to libellant in this case.

HOWELL & RICE,
Produ. for Libellant.

272 (Endorsed:) U. S. dist. c't. U. W. Union Packet Co. vs. Samuel Atlee. Stipulation. Opened by agreement of parties & filed Jan'y 29, 1872. H. K. Love, clerk. By Eru J. Leech, dep'ty. Filed Oct. 10, 1872. George B. Corkhill, clerk.

273 UNITED STATES OF AMERICA,
District of Iowa, ss:

To D. D. Duncan, esq., or some other notary public in and for S't Louis County, S't Louis, Mo.:

Know ye that we, the district court of the United States of Iowa, reposing full confidence in your integrity and fidelity, do by these presents constitute, empower, and commission you to summon or cause to come before you at such time and p'ace as you shall appoint, according to the notice hereto accompanying, Thomas Douglas, a material witness, as it is said, on the part and in behalf of plaintiff in a suit wherein the Northwestern Union Packet Company is plaintiff, and Samuel Atlee is defendant, now pending in *one* said district court, and him to examine on his corporal oath or affirmation first to him administered, true answer to make to the several interrogatories accompanying this commission, and the same when taken to certify, seal up, and forward to the clerk of said district court with all convenient speed.

Witness Hon. Ja's M. Love, judge of said court, and the seal thereof affix' at Keokuk, in said district, this 28th day of May, A. D. 1872.

Attest:
[SEAL U. S. DIST. COURT.]

H. K. LOVE,
Clerk U. S. D. C.
By ERU J. LEECH,
Deputy.

274 *Notice.*

District court United States, district Iowa, southern division.

NORTHWESTERN UNION PACKET CO., LIBELLANT, *vs.* SAMUEL ATLEE, RESPONDENT. } Admiralty.

Samuel Atlee, respondent, and his att'ys, McCrary, Miller and McCrary, in the above-entitled cause, are hereby notified that five days after the service of this notice upon you the libellants in the said cause will sue out a commission from the clerk's office of the United States district court aforesaid, in said cause, to take the depositions of one Tho's Douglas, at Saint Louis, Missouri, before D. D. Duncan, or *serve* other notary public in and for St. Louis County, St. Louis, Mo., upon the subjoined interrogatories, and thereupon may file with the clerks of said court in the mean time. Said deposition to be taken and used in behalf of said libellant.

HOWELL & RICE,
Att'y for Libellant.

Keokuk, Iowa, May 23. Rec'd copy of notice & interrogatories, and commission may issue on Tuesday, May 23, 1872.

McCRARY, MILLER & McCRARY,
Att'ys for Resp'd'

275 Interrogatories by libellant in chief.

1. State your name, age, place of residence, and occupation.
2. State how many years you have been engaged in the business you have named.
3. State whether, in the prosecution of the business you have named, you have been accustomed to passing the *term* of Fort Madison, Iowa, on rafts; and, if so, during what seasons.
4. State what knowledge, if any, you have of the location of the two piers in the Mississippi River opposite or near Atlee's mill, a short distance below the steamboat-landing, at the town of F't Madison.
5. State, if you know, how the natural current of the river flows along there with reference to their piers and each of them, upper & lower.
6. Have you ever passed them on a raft; and, if so, state when; and if so, give the particulars, if any, of what happened, fully and carefully.
7. How do those piers and each of them affect the navigation of the river at that place, if at all?
8. State, if you know, what those piers, & each of them, con-
276 stitute with reference to the navigation of the river at that place.
9. State any other matter you may know material to the issues in this suit.

HOWELL & RICE,
Att'ys for Libellant.

(Endorsed:) U. S. dist. c't, Iowa. Northwestern Union Packet Co., libellant, vs. Samuel Atlee, resp't. Notice & interrogatories.

ross-interrogatories to be propounded Thomas Douglass, by att'ys for respondent, subject to the following objections, which the notary will please note after each interrogatory-in-chief mentioned before the answer is given.

Respondent*s* objects to interrogatory No. 5 in chief as incompetent, because witness has not shown himself to be an expert and cannot give the course of the current.

Respondent objects to question 6 in chief as immaterial to the issues, and as incompetent for the reason as last objection.

277 Respondent objects to question No. 7 in chief as incompetent, because witness is not an expert as to river navigation.

Respondent objects to question 8 in chief as incompetent, for same reasons as last objection, and further object' because immaterial and as leading in form.

Cross-interrogatories.

1. Where have you lived the last 15 years?
2. What steamboats have you ever piloted, if any, and where and when?
3. What is your business now, and in whose employ are you?
4. How far can you see the piers in the river at Atlee's mill?
5. How deep is the water at an ordinary stage between the piers & the river-bank, Iowa side?
6. Did you ever measure it; if so, when?
7. How far are the piers from the Iowa bank?

278 8. Did you ever measure it; if so, when?

9. Is there not a sand-bar making out beyond the piers?

10. When did you last see the piers?

11. Who called your attention to them?

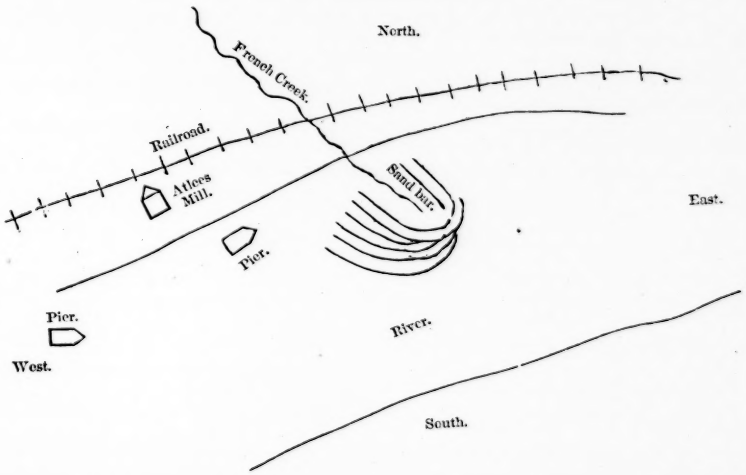
12. Which pier is nearest the channel?

13. Which pier have you been speaking of in your statement of distances?

14. How high do they stand above the water?

14. Do you not know that a short distance above the upper pier is a sand-bar running from the Iowa shore several hundred feet into the river, which is several feet above water in low stage of the river?

15. Is this not a diagram of the Iowa side of the river for several hundred feet above and below the upper pier, to wit:



16. If you cannot say whether that is or is not a diagram of said sand-bar and piers, answer whether you have ever seen the mouth of that creek or the sand-bar.

17. When did you see the sand-bar, and when the mouth of the creek?

18. State the number of times you have passed Fort Madison on a raft, and the years when you passed, and in what capacity you were on a raft.

280 Deposition of a witness produced, sworn, and examined at my office, 211 North 3d st., in the city and county of St. Louis, State of Missouri, before me, David D. Duncan, a notary public, duly commissioned and qualified within and for said county and State, in a certain case now pending in the district court of the United States, district of Iowa, between Northwestern Union Packet Company, libellant, and Samuel Atlee, respondent, on the part of the libellant, and in pursuance of the foregoing commission from said court and upon the interrogatories and cross-interrogatories thereto attached. Taken at the place aforesaid on this eighth day of June, A. D. 1872, being the time and place appointed by me for that purpose.

THOMAS DOUGLAS, of lawful age, being produced, sworn, and examined on the part of the libellant, deposeth and saith:

Interrogatories by libellant in chief:

1. State your name, age, place of residence, and occupation.

Ans. My name is Thomas Douglas; age, fifty-one years; place of residence, St. Louis, Mo.; occupation, lumberman.

281 2. State how many years you have been engaged in the business you have named.

Ans. Ever since the fall of 1840.

3. State whether, in the prosecution of the business you have named, you have been accustomed to passing the town of Fort Madison, Iowa, on rafts; and, if so, during what seasons.

Ans. I have been in the habit of passing Fort Madison, less or more, every year since 1843 on rafts and boats.

4. State what knowledge, if any, you have of the location of the two piers in the Mississippi River opposite or near A'lee's Mill, a short distance below the steamboat-landing at the town of Fort Madison.

Ans. The piers of Atlee's Mill stand at the point below the mouth of the creek; one, if I recollect right, is a little above the mill, & one, I think, a little below or nearly opposite the upper mill.

5. State, if you know, how the natural current of the river flows along there, with reference to these piers, and each of them, upper or lower.

(Respondent objects to this question (No. 5) as incompetent, because witness has not shown himself to be an expert, and cannot
282 give the course of the current.)

Ans. I have known the natural current of the river there ever since 1843. It flows close to the point above the piers, and alongside of the piers obstruct it to some extent. Before the piers were built I have landed lumber just below the point, & on the places where the piers now stand. The natural current runs from the point above the upper pier almost parallel with the two piers, & after passing the lower one strikes to the east to the island on the east side of the channel.

6. Have you ever passed them on a raft; and, if so, state when, and if so, give the particulars, if any, of what happened, fully and carefully.

(Respondent objects to this question (No. 6) as immaterial to the issues, and as incompetent, for the same reason as last objection.)

Ans. I have passed them many times on rafts, and the last time I passed them on a raft was between the 10th and 16th of last September, (1871,) on a six-string log-raft, the running of which I directed.

On passing the steamboat landing I said to the pilot, "Had
283 you not better have your men hold up under the bar as close as you can on account of the water drawing in against the piers below? and may, if you get in too close, get your raft broken up on the piers." He answered, "I know it, but I cannot on account of the bar get up much closer;" but on my suggestion he commenced pulling his men. I pulled steadily, and we barely missed the upper piers, and struck the boom between the two tiers, and tore a number of our logs loose. Mr. Atlee was on the boom at the time when we struck.

7. How do those piers, and each of them, affect the navigation of the river at that place, if at all?

(Respondent objects to this question (No. 7) as incompetent, because witness is not an expert as to river navigation.)

Ans. They stand right in the edge of the channel, in fact, in the chan-

nel, in part, at low water. They, and each of them, are obstructions to navigation of the river. So much so that on the occasion to which I referred in my last answer it was impossible to keep my raft off
284 of those piers on account of the current setting so strongly against them.

8. State, if you know, what those piers, and each of them, constitute with reference to the navigation of the river at that place.

(Respondent objects to this question (No. 8) as incompetent for same reason as last objection, and further objects because immaterial and as leading in form.)

Ans. They constitute a nuisance; decidedly an obstruction to navigation.

9. State any other matter you may know material to the issues in this suit.

Ans. I know nothing more about the matter.

Cross-interrogatories by respondent.

1. Where have you lived the last 15 years?

Ans. In Wisconsin; from the fall of 1840 to August, 1865. I lived there in the city of St. Louis.

2. What steamboats have you ever piloted, if any, and where, and when?

Ans. None.

3. What is your business now, and in whose employ are you?

Ans. I am now a lumberman, in business for myself.

285 4. How far can you see the piers in the river at Atlee's mill?

Ans. Coming down I can see them for possibly a mile in the day-time; that is, I can, at that distance, see that there is something there. In the night-time they cannot be seen for scarcely any distance above. I never saw lights on the piers, or either of them.

5. How deep is the water at ordinary stage between the piers and river banks, Iowa side?

Ans. I cannot answer, as I never measured; but before the piers were built we used to run right up to the bank there, inside of where the piers now stand.

6. Did you ever measure it; if so, when?

Ans. I never measured it.

7. How far are the piers from the Iowa bank?

Ans. I don't know exactly, but I judge from 100 to 200 feet in low water, and further in high water.

8. Did you ever measure it; if so, when?

Ans. Never.

9. Is there not a sand-bar making out beyond the piers?

Ans. There is above the upper pier, and it continues down alongside and below the pier a little.

286 10. When did you see piers?

Ans. In April of this year; 1872.

11. Who called your attention to them?

Ans. I don't remember that any one did.

12. What pier is nearest to the channel?

Ans. They are both in the channel; the upper one the furthest in.

13. Which pier have you been speaking of in your statement of distances?

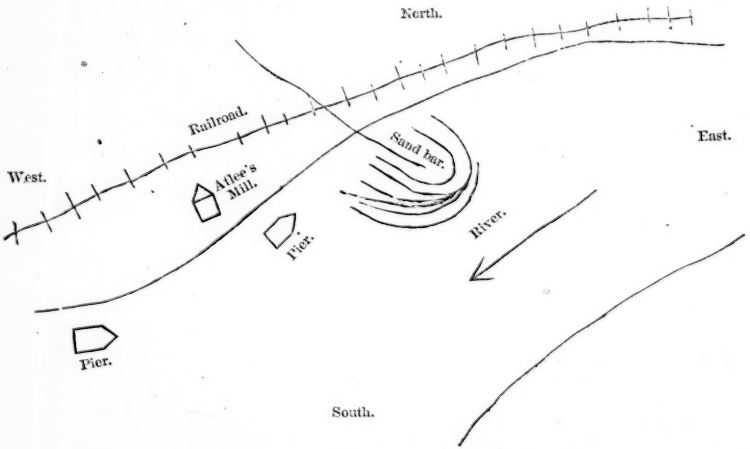
Ans. The upper one.

14. I never measured them, but I judge from 8 to 12 feet in low water.

14. Do you not know that a short distance above the upper pier is a sand-bar running from the Iowa shore several hundred feet into the river, which is several feet above water in low stages of the river?

Ans. There is such a bar commencing at or about the depot, and running down past the mouth of the creek to the gravel-point below the creek.

15. Is not this a diagram of the Iowa side of the river for several hundred feet above and below the upper pier? To wit:



Ans. It may be meant for it, but it is not accurate.

(The witness draws a diagram in pencil of the river, which, being copied in ink by the notary, is signed by the witness, and marked Exhibit A by the notary, & is hereto attached as a part of this deposition.)

This paper marked Exhibit A, and signed by me, shows the true position of the piers, the current, sand-bar, and other places & things thereon marked as accurately as can be done by me.

16. If you cannot say whether that is or is not a diagram of said sand-bar and piers, answer whether you have ever seen the mouth of that creek or the sand-bar.

288 Ans. I have seen both.

17. When did you see the sand-bar, and when the mouth of the creek?

Ans. Many times.

18. State the number times you have passed Fort Madison on a raft, and the years when you passed, and in what capacity you were on a raft.

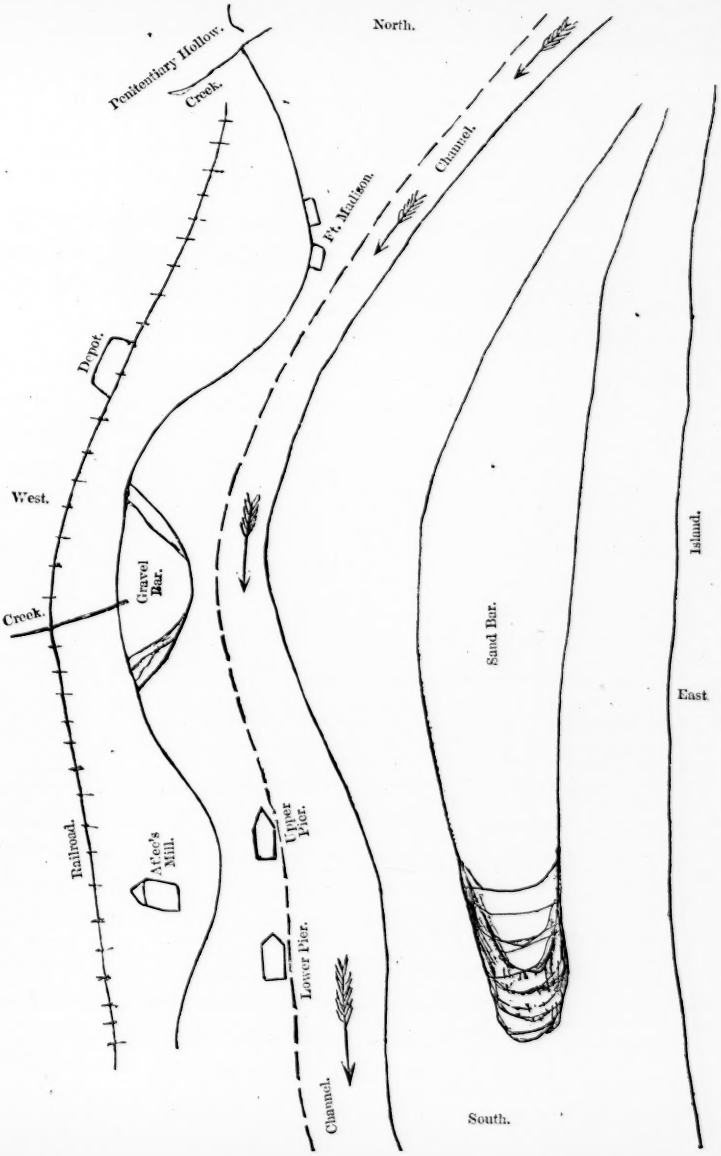
Ans. Many times every year for the last thirty years, nearly every year; I think every year during that time, as owner and in charge of rafts.

THO'S DOUGLAS.

Sworn to & subscribed before me this 8th day of June, A. D. 1872.

[NOTARIAL SEAL.] D. D. DUNCAN,
Notary Public.

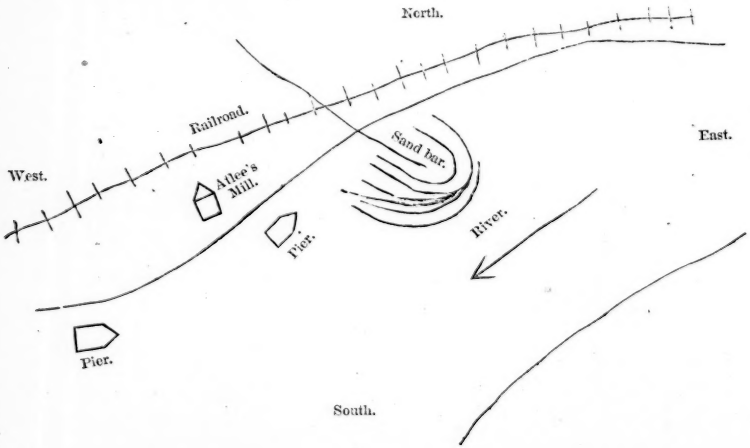
289 *Exhibit A referred to in deposition of T. Douglas, June 8, 1872.—D. D. Duncan, notary public.*



14. Do you not know that a short distance above the upper pier is a sand-bar running from the Iowa shore several hundred feet into the river, which is several feet above water in low stages of the river?

Ans. There is such a bar commencing at or about the depot, and running down past the mouth of the creek to the gravel-point below the creek.

15. Is not this a diagram of the Iowa side of the river for several hundred feet above and below the upper pier? To wit:



Ans. It may be meant for it, but it is not accurate.

(The witness draws a diagram in pencil of the river, which, being copied in ink by the notary, is signed by the witness, and marked Exhibit A by the notary, & is hereto attached as a part of this deposition.)

This paper marked Exhibit A, and signed by me, shows the true position of the piers, the current, sand-bar, and other places & things thereon marked as accurately as can be done by me.

16. If you cannot say whether that is or is not a diagram of said sand-bar and piers, answer whether you have ever seen the mouth of that creek or the sand-bar.

288 Ans. I have seen both.

17. When did you see the sand-bar, and when the mouth of the creek?

Ans. Many times.

18. State the number times you have passed Fort Madison on a raft, and the years when you passed, and in what capacity you were on a raft.

Ans. Many times every year for the last thirty years, nearly every year; I think every year during that time, as owner and in charge of rafts.

THO'S DOUGLAS.

Sworn to & subscribed before me this 8th day of June, A. D. 1872.

[NOTARIAL SEAL.] D. D. DUNCAN,
Notary Public.

289 *Exhibit A referred to in deposition of T. Douglas, June 8, 1872.—D. D. Duncan, notary public.*

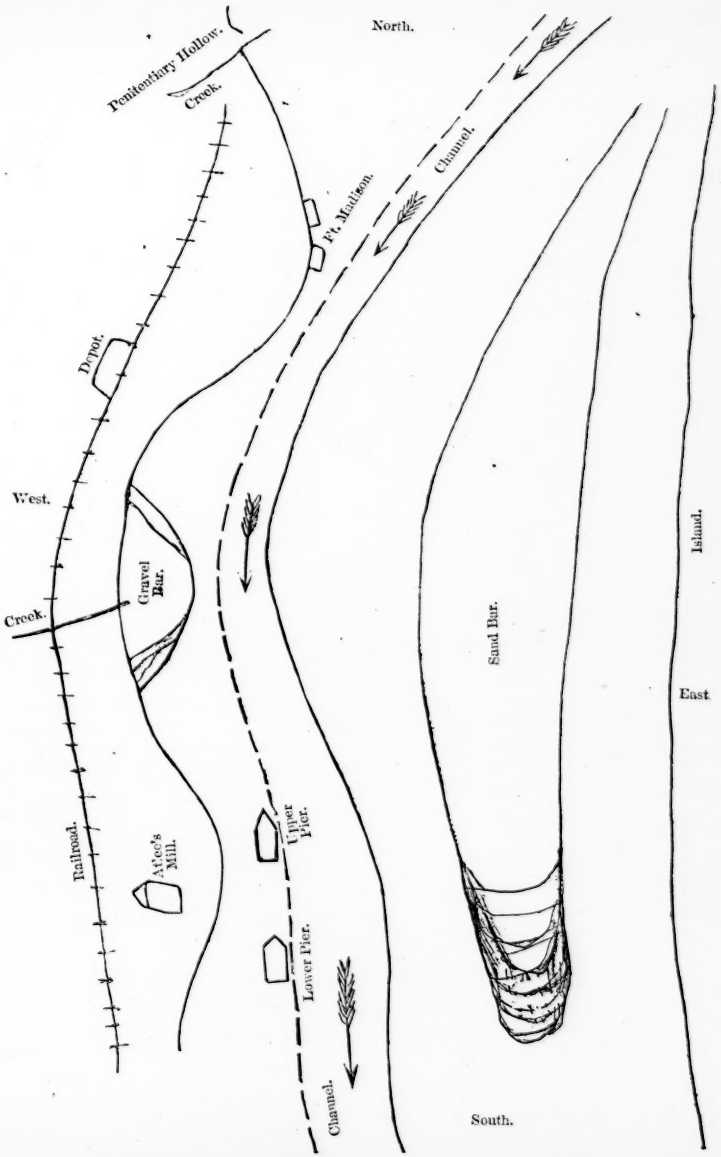


Diagram of the river above and below the piers referred to in my deposition.

THO'S DOUGLAS.

Subscribed before me this 8th June, 1872.
[NOTARIAL SEAL.]

D. D. DUNCAN,
Notary Public.

290 UNITED STATES OF AMERICA :
Eastern District of Missouri :

STATE OF MISSOURI, *County of St. Louis, ss :*

I, David D. Duncan, a notary public duly commissioned and qualified within and for the county and State aforesaid, and the commissioner named in the foregoing commission, do hereby certify, that in pursuance of said commission, and the notice therewith, came before me, at my office, No. 211 North 3rd st., in the city of St. Louis, county and State aforesaid, on this 8th day of June, A. D. 1872, between the hours of eight o'clock a. m. and six o'clock p. m. of same day, being the time and place appointed by me for that purpose, Thomas Douglas, whose place of residence is in the city of St. Louis, Mo., who was by me then and there sworn to testify the whole truth of his knowledge touching the matter in the cause aforesaid ; that deponent was examined upon the interrogatories in chief, and the cross-interrogatories to said commission and notice annexed ; that his said examination was reduced
291 to writing, as it appears above, by me, who am neither of the parties to said suit, nor attorney or counsel of either, or in anywise interested in said suit ; and that, after being by me carefully read over to the deponent, the same was sworn to and subscribed by said deponent as his deposition, in my presence, at the place, on the day, and between the hours last aforesaid, and his deposition is now herewith returned.

And I further certify that neither of the parties to said cause, nor any one representing them, or either of them, whether as counsel, attorney, or agent, were or was present during said examination.

Given under my hand and seal official hereto affixed at office, in the city & county of St. Louis, State of Missouri, this the eighth day of June, A. D. 1872.

D. D. DUNCAN,
Notary Public, St. Louis Co., Mo., & the Commissioner named in the foregoing commission.

[NOTARIAL SEAL.]

Notary's fee $15.00, paid by libellant.

D. D. DUNCAN, *N. P.*

2 STATE OF MISSOURI :
County of St. Louis, ss :

I, Frederick C. Schoenthaler, clerk of the county court of St. Louis County, certify that D. D. Duncan, whose name is subscribed to the foregoing certificate, dated June 8th, A. D. 1872, was on said date an acting notary public in and for said county, duly commissioned, and qualified, and authorized to take depositions ; that the signature thereto is genuine, as I believe, and that to all such, his official acts, full faith and credit are and ought to be given.

In testimony whereof I hereto set my hand and affix the seal of said court, at office, in the city of St. Louis, this eighth day of June, eighteen hundred and seventy-two.

[SEAL OF CO. COURT.] F. C. SCHOEUTHALER, *Clerk.*

(Endorsed:) U. S. district court, district of Iowa., Northwestern Union Packet Company, libellant, vs. Samuel Atlee, respondent. Deposition of T. Douglas, for libellant. Filed Ju. 24, 1872. H. K. Love, clerk, by Eni J. Leech, dep. Filed Oct. 10, 1872. George B. Corkhill, clerk.

293 District court of the United States, district of Iowa, ss:

The President of the United States, to D. Duncan, notary public, at St. Louis, Missouri:

Know ye, that in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority to examine R. C. Stevens, Thos. F. Ruby, David Tipton, W'm Woods, Thos. Ward, A. Hempnell, L. R. Williams, Henry White, Willis Blakeslee, Willard Blakeslee, R. S. Brom, Geo. S. Baker, W'm R. Durall, Robert Farris, James Coleman, Andrew Coleman, Uriah Buck, Ed. Calahan, Jas. Collins, W'm P. Hight, Wash. Hight, W'm O. Hall, John King, W'm Kelley, W'm Owens, John McGinnis, Jas. C. McGinnis, Jos. W. Mullen, Cha's Manning, A. D. LeClaire, Thos. Parker, W'm F. Parker, D. J. Alley, Sam. C. Curtis, Campbell Hunt, W'm Gossett, Ed. West, J. S. Buchanan, Pat. Ganier, Capt. W'm Carson, Jack Harris, H. Budle, James Cannon, William Gorsuch, Clede Beach, on their corpo-

294 real oaths, as witnesses in a cause depending in the district court of the United States for the district of Iowa, southern division, wherein the Northwestern Union Packet Company is plaintiff, and Samuel Atlee is defendant, on the part of the plaintiff, upon the interrogatories annexed to this commission, and you are hereby commanded that you, at certain days and places to be appointed by you for that purpose, do cause the said above-named person to come before you and then and there examine them on oath upon the said interrogatories, and that you take such examination, and reduce the same to writing, and return the same, together with this commission and the accompanying notice, and interrogatories sealed up under your seal, and endorsed with the names of the parties litigant and word "Depositions" on the cover thereof, into the said U. S. district court, at Keokuk, to the clerk thereof, with all convenient speed.

Witness the Hon. J. M. Love, judge of said court, and the seal thereof, at Keokuk, Iowa, in said district, this 20 day of Februar', A. D. 1872.

[SEAL OF U. S. DIST. COURT.] H. K. LOVE, *Clerk*,
By ENI J. LEECH, *Deputy*.

295 OFFICE OF THE UNITED STATES MARSHAL,
District of Iowa:

I, Peter Melendy, marshal of the United States for the district of Iowa, hereby constitute and appoint Andrew Brown, of the county of Lee, and State of Iowa, a special deputy U. S. marshal for the purpose of serving the notice (hereunto attached,) in the case of the Northwestern Union Packet Company vs. Samuel Atlee.

Witness my hand, at Cedar Falls, Iowa, this 12th day of February, A. D. 1872.

PETER MELENDY.
U. S. Marshal.

296 In the district court of the United States for the district of Iowa, at Keokuk. In admiralty.

NORTHWESTERN UNION PACKET COMPANY }
vs.
SAMUEL ATLEE. }

To Samuel Atlee, or McCrary, Miller & McCrary, att'ys of record for said Samuel Atlee:

You are hereby notified that, five days after the service of this notice, the above-named libellant will sue out of the office of the clerk of the district court of the United States for the district of Iowa, at Keokuk, a commission to take the depositions of the following-named persons, on the instructions hereto attached: R. C. Stevens, Tho's F. Ruby, David Tipton, W'm Woods, Tho's Ward, A. Wernpence, L. R. Williams, Henry White, Willis Blakeslee, Willard Blakeslee, R. S. Brown, Geo. S. Baker, W'm R. Durall, Robb Fanio, Ja's Coleman, Andrew Coleman, Uriah Buck, Ed. Calahan, Ja's Collins, W'm P. Hight, Wash. Hight, W'm O. Hall, John King, W'm Kelly, W'm Owens, John McGinnis,
297 Ja's C. McGinnis, Jos. W. Mullen, Cha's Manning, A. D. Le Clair, Tho's Parker, W'm F. Parker, D. J. Ally, Sam. C. Curtis, Campbell Hunt, William Gossett, Ed. West, J. S. Buchanan, Pat. Gamis, Capt. W'm Carson, Jack Harris, H. Beedle, James Cann, William Gorsuch, Cledi Beard; which depositions will be taken before D. D. Duncan, notary public, at St. Louis, Missouri, and will be used on the trial of said cause on the part of the libellant.

Of all which you will take due notice and file cross-interrogatories.

The following interrogatories will be propounded to all of the above-name witnesses:

Direct interrogatories:

1. State your name, age, place of residence, and occupation.

2. State how long you have been engaged in such occupation, and upon what waters.

3. Do you now or have you ever held a license to pilot steam-
298 boats on the Upper Mississippi River; and if so, how long have you held such license and between what points?

4. Have you piloted steamboats past the town of F't Madison, Iowa; and if so, during what seasons?

5. Have you a personal knowledge of any piers in the Mississippi River opposite some saw-mills below and near the town of F't Madison? If so, state how many there are and how they are located with reference to the channel of the river. State particularly and fully.

6. Did you ever pass them in the night-time prior to April 23d, 1871? and if you did, was there any light on them or either of them?

7. State, if you know, what the stage of water was at said piers April 23, 1871.

8. How far could the upper pier be seen by the pilot of a descending boat at about 11 o'clock at night, if there was no moon and if there was no light on the pier?

9. If you know, state how the channel of the river ran in April,

299 1871, commencing at the Fort Madison wharf and describing it until below the lower pier.

10. Where does the upper pier stand with reference to the channel of the river?

11. Is there any sand-bar making out from the Iowa shore between the upper pier and Fort Madison landing? If so, describe its location and extent, and at what stage of water it is bare.

12. How close can steamboats run to the end of said sand-bar in a low stage of water?

13. How close can steamboats run to the end of said sand-bar in a high stage of water?

14. State, if you know, what the depth of water is just alongside the upper pier when the river is at a low stage, and also what it is at a high stage.

15. Prior to the erection of said piers where did steamboats run with reference to the places on which said piers now stand?

16. What do these piers constitute, so far as their effect upon the navigation of the river is concerned?

300 17. State whether the perils of navigation are either increased or diminished by said upper pier.

18. State any other matter or thing you may know of benefit or advantage to either party in this suit.

Keokuk, Feb'y 13, 1872.

HOWELL & RICE,
Att'ys for Libellant.

This notice and the interrogatories thereto attached came into my hand on the 12th day of Feb'y, 1872, and I served same on the within-named Samuel Atlee by reading the same to him personally and by delivering to him personally a true copy of the same on the 13 day Feb'y, 1872, in the city of F't Madison, Lee County, Iowa.

ANDREW BROWN.

Subscribed and sworn to before me this 20th day of Feb'y, 1872.

H. K. LOVE, *Cle'k.*
By ENI J. LEECH, *Dep.*

Fees: Sarvi's, $2.00; miles, 50, $2.50; copy, 1.50—$6.00. Paid by Howell & Rice, attorneys for pla'nt.

301 Depositions of witnesses produced, sworn, and examined at the office of Duncan & Woodward, No. 211 North Third st., in the city of St. Louis, county of St. Louis, and State of Missouri, before me, David D. Duncan, a notary public duly commissioned and qualified within and for said county and State, in a certain case now pending in the district court of the United States for the district of Iowa, State of Iowa, between Northwestern Union Packet Company, libellant, and Samuel Atlee respondent, on the part of the libellant.

MAY 22ND, 1872.

ORLANDO L. WEST, of lawful age, being produce', sworn, and examined on the part of the libellant, deposeth and saith:

1. State your name, age, place of residence, and occupation.

A. My name is Orlando L. West; age, forty years; residence, in Dubuque, Iowa; occupation, a river pilot, between St. Louis and St. Paul.

302 2. State how long you have been engaged in such occupation, and upon what waters.

A. About twenty-one years, as a pilot on the Mississippi River.

3. Do you now, or have you ever held a license to pilot steamboats on the Upper Mississippi River, and, if so, how long have you held such license, and between what points?

A. I do now hold such license; have held one ever since 1852, between St. Louis and St. Paul.

4. Have you piloted steamboats past the town of F't Madison; and, if so, during what season?

A. I have; all of the season of last year, 1871, and probably ten or twelve seasons previous to that.

5. Have you a personal knowledge of any piers in the Mississippi River opposite some saw-mills below and near the town of F't Madison? If so, state how many there are and how they are located with reference to the channel of the river. State particularly and fully.

303 A. I have a personal knowledge of those piers; there are two, I believe; they stand either in or right close to the channel of the river, in as good water as there is there. They stand right where we would run if they were not there. We would get right down where they are.

6. Did you ever pass them in the night-time prior to April 23, 1871; and, if you did, was them any light on them, or either of them?

A. I have passed them in the night-time prior to that date; there was no light on either of them. I never saw a light on either of them. I passed them on the evening of the 23d April, 1871, and there was no light on either of them then.

7. State, if you know, what the stage of water was at said piers April 23d, 1871.

A. The water was pretty well up; it was good running water, what might be termed well up—not the highest, but a big stage of water.

304 8. How far could the upper pier be seen by the pilot of a descending boat at about 11 o'clock at night, if there was no moon and if there was no light on the pier?

A. They could not be seen at all until you get right on to them—close to them; they stand in the shade of the bluff & mills and timber, &c.

9. If you know, state how the channel of the river ran in April, 1871, commencing at the Fort Madison wharf and describing it until the lower pier.

A. It ran from the wharf right close in to the Iowa shore around the bend, in low water; in high water, as it was then, we had more room. From the gravel point in the bend just above the upper pier, we had to bear to the right as close to the piers as poss. in order to avoid going head on to the left-hand bar. We had to pass close by and above both piers, and from the same we went straight down the middle of the river.

10. Where does the upper pier stand with reference to the channel of the river?

305 A. It stands, I think, in as deep water as there is there. I think that pier takes just about one-third of the room we have from the left-hand bank, the Iowa shore.

11. Is there any sand-bar making out from the Iowa shore between the upper pier and Fort Madison landing? If so, describe it, its location and extent, and at what stage of water it is bare.

A. There is such a sand-bar; it is between two and three hundred

feet above the upper pier; it is a small bar in the bend, standing out, as near as I can judge, about one hundred and fifty feet, perhaps more. It is bare at a four-feet stage of water.

12. How close can steamboats run to the end of said sand-bar in a low stage of water?

A. Close up to it—as close as you can without hitting it; it is a bluff bar.

13. How close can steamboats run to said bar at a high stage of water?

A. At a high stage we can go anywhere.

306 14. State, if you know, what the depth of water is just alongside the upper pier when the river is at a low stage, and also what it is at a high stage.

A. I do not know accurately; it is deep and we never take soundings there either in low or high water; the boats acts as if there was plenty of water there at all times, as I believe there is.

15. Prior to the erection of said piers, where did steamboats run, with reference to the places on which said piers now stand?

A. They ran right where the piers are.

16. What do these piers constitute, so far as their effect upon the navigation of the river is concerned?

A. They constitute an obstruction.

17. State whether the perils of navigation are either increased or diminished by said upper pier.

A. The perils are increased considerably.

18. State any other matter or thing which you may know of benefit or advantage to either party in this suit.

307 A. I know of nothing further.

O. L. WEST.

Sworn to and subscribed before me this 22d day of May, A. D. 1872.
[NOTARIAL SEAL.] D. D. DUNCAN,
Notary Public.

Paid witness $1.25.

STATE OF MISSOURI,
County of S't Louis, ss:

I, David D. Duncan, a notary public within and for said county and State, do hereby certify that Orlando L. West, the deponent, whose place of residence is in Dubuque, Iowa, was by me sworn to testify the whole truth, of his knowledge, touching the matter in controversy in the caus' aforesaid; that deponent was examined, and his examinations reduced to writing by me, who am neither of the parties, nor attorney of either, or in anywise interested in the suit, and, after being

308 carefully by me read over to the said deponent, the same was sworn to and subscribed by the said deponent in my presence, on the 22d day of May, A. D. 1872, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, at S't Louis, in the county of S't Louis, State of Missouri. Given and certified under my hand and official seal this 22d day of May, A. D. 1872.

[NOTARIAL SEAL.] D. D. DUNCAN,
Notary Public.

DAVID LE CLAIRE, of lawful age, being produced, sworn, and examined on the part of the libellant, deposeth and saith:

1. State your name, age, place of residence, and occupation.

A. My name is David LeClaire; age, fifty-three years; residence, Davenport, Iowa; occupation, a river-pilot.

2. State how long you have been engaged in such occupation, and upon what waters.

309 A. I have been a pilot since 1837 on the Mississippi, from S't Louis to S't Paul.

3, Do you now or have you ever held a license to pilot steamboats on the Upper Mississippi River; and, if so, how long have you held such license and between what points?

A. I do hold such a license, & have held one since 1852 between S't Louis & S't Paul.

4. Have you piloted steamboats past the town of F't Madison, Iowa; and, if so, during what seasons?

A. I have every season since I have been a pilot.

5. Have you a personal knowledge of any piers in the Mississippi River, opposite some saw-mills below and near the town of F't Madison? If so, state how many there are and how they are located with reference to the channel of the river. State particularly and fully.

A. I have a personal knowledge of these piers. There are two piers. They stand in or near the channel at the present time. I have seen the channel right where they are years back.

6. Did you ever pass them in the night-time prior to April 23, 1871; and, if you did, was there any light on them, or either of them?

310 A. I have passed them prior to that date. There was no light on them, or either of them.

7. State, if you know, what the stage of water was at said piers April 23, 1871.

A. I should judge that at that time there was a four or five-feet stage on the lower rapids. It was a pretty good stage of water, not the highest at the piers.

8. How far could the upper pier be seen by the pilot of a descending boat at about 11 o'clock at night, if there was no moon, and if there was no light on the piers?

A. It could not be seen under such circumstances a hundred yards. They were in the shade of the saw-mills, timber, &c.

9. If you know, state how the channel of the river ran in April, 1871, commencing at the Fort Madison wharf, and describing it until below the lower pier.

A. It ran down the bend close to the Iowa shore, from the wharf to the gravel-point, & then continued to the right, along the piers, close to them. From the lower pier it went straight down the river.

311 10. Where does the upper pier stand with reference to the channel of the river?

A. It stands in the channel.

11. Is there any sand-bar making out from the Iowa shore between the upper pier and Fort Madison landing? If so, describe it; its location and extent, and at what stage of water *at* is bare.

A. There is what we call the gravel-point. It is from one hundred to three hundred feet long in low water along the shore; about three or four hundred feet from the upper pier to the point of the bar. It is bare at a four-feet stage of water.

12. How close can steamboats run to the end of said sand-bar in a low stage of water?

A. As close as they can without hitting it.

13. How close can steamboats run to the sand-bar at a high stage of water?

A. They can run over it, if necessary.

14. State, if you know, what the depth of water is just alongside the upper pier when the river is at a low stage, and also what it is at a high stage.

312 A. I can't tell, never having measured it. There is plenty of water there, because we always run right alongside of it without any trouble at any stage of water.

15. Prior to the erection of said piers where did steamboats run with reference to the places on which said piers now stand?

A. They ran right where the piers now stand. I have run right over where they now are.

16. What do these piers constitute, so far as their effect upon the navigation of the river is concerned.

A. They are nuisance; an obstruction.

17. State whether the perils of navigation are either increased or diminished by said upper pier.

A. The perils of navigation are increased.

18. State any other matter or thing which you may know of benefit or advantage to either party in this suit.

A. I know of nothing further, except that I wish the piers were out of there.

his
DAVID + LE CLAIRE.
mark.

Witnesses to signature:
D. D. DUNCAN.
J. L. WEST.

Paid witness, $1.25.

Sworn to and subscribed before me this 22d day of May, A. D. 1872.
D. D. DUNCAN,
Notary Public.

313 STATE OF MISSOURI,
County of S't Louis, ss:

I, David D. Duncan, a notary public duly commissioned and qualified within and for said county and State, do hereby certify that David Le Claire, the deponent, whose place of residence is in Davenport, Iowa, was by me sworn to testify the whole truth, of his knowledge, touching the matter in controversy in the cause aforesaid; that deponent was examined, and his examination reduced to writing by me, who am neither of the parties, nor attorney of either, or in anywise interested in the suit, and, after being carefully by me read over to the said deponent, the same was sworn to and subscribed by the said deponent, in my presence on the 23d day of May, A. D. 1872, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, at the city and county of S't Louis, State of Missouri.

Given and certified under my hand and seal official this 22d day of May, A. D. 1872.

[NOTARIAL SEAL.]

D. D. DUNCAN,
Notary Public, S't Louis Co., Mo.

314 ALBERT WEMPNER, of lawful age, being produced, sworn, and examined on the part of the libellant, deposeth and saith:

1. State your name, age, place of residence, and occupation.

A. My name is Albert Wemper; age, thirty-eight years; residence, Hamilton, Ill's; occupation, a steamboat pilot.

2. State how long you have been engage' in such occupation and upon what waters.

A. About twenty years, in the Upper Mississippi, from S't Louis to S't Paul.

3. Do you now, or have you ever, held a license to pilot steamboats on the Upper Mississippi River; and, if so, how long have you held such license and between what points?

A. I now hold such a license, and have held one ever since the law was enforced in 1852, I think, between S't Louis and S't Paul.

4. Have you piloted steamboats past the town of F't Madison, Iowa; and, if so, during what seasons?

A. I have piloted steamboats past Fort Madison every season since 1852.

315 Have you a personal knowledge of any piers in the Mississippi River opposite some saw-mills below and near the town of F't Madison? If so, state how many there are, and how they are located with reference to the channel of the river. State particularly and fully.

A. I have a personal knowledge of those piers. There are two piers opposite or a little below Mr. Atlee's saw-mill. They are in the channel, I think, as the channel reaches to the shore at that point.

6. Did you ever pass them in the night-time prior to April 23, 1871; and if you did, was there any light on them or either of them?

A. I have passed them in the night-time prior to that date. There was no light on either of them.

7. State, if you know, what the stage of water was at said piers April 23d, 1871.

A. There was a good stage of water—a medium stage—not low nor high.

8. How far could the upper pier be seen by the pilot of a descending boat, at about 11 o'clock at night, if there was no moon, & if there was no light on the pier?

316 A. I don't know.

9. If you know, state how the channel of the river ran in April, 1871, commencing at the Fort Madison wharf and describing it until below the lower pier.

A. It followed the bend close to the Iowa shore, with the exception of a little stand out at the mouth of a little creek above the piers. It runs apast the piers. We aim to run the boat on the outside of the piers and by the piers.

10. Where does the upper pier stand with reference to the channel of the river?

A. It stands to the right of the center of the channel, going down stream.

11. Is there any sand-bar making out from the Iowa shore between the upper pier and Fort Madison landing? If so, describe it—its location and extent, and at what stage of water it is bare.

A. There is a little bar at the mouth of the creek above the piers. It is about five or six hundred feet, I should think, above the upper pier. Its extent varies with the stage of water. It is bare in very low water.

12. How close can steamboats run to the end of said sand-bar in a low stage of water?

317 A. They can land against it.

13. How close can steamboats run to said bar at a high stage of water?

A. They can run over it.

14. State, if you know, what the depth of water is just alongside the upper pier when the river is at a low stage and also while it is at a high stage.

A. I do not know. It is always deep enough for steamboats.

15. Prior to the erection of said piers where did steamboats run with reference to the places on which said piers stand?

A. We ran just where we do now.

16. What do these piers constitute so far as their effect upon the navigation of the river is concerned?

A. They are an obstruction.

17. State whether the perils of navigation are either increased or diminished by said upper pier.

A. They are increased.

18. State any other matter or thing which you may *no* of benefit or advantage to either party in this suit.

A. I know nothing.

ALBERT WEMPNER.

Sworn to & subscribed before me this 22d day of May, A. D. 1872.

D. D. DUNCAN,
Notary Public.

318 STATE OF MISSOURI,
County of S't Louis, ss:

I, David D. Duncan, a notary public, duly commissioned and qualified within and for the said county & State, do hereby certify that Albert Wampner, the deponent, whose place of residence is in Hamilton, Illinois, was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid; that deponent was examined and his examination reduced to writing by me, who am neither of the parties, nor attorney of either, or in anywise interested in the suit; and, after being carefully by me read over to the said deponent, the same was sworn to and subscribed by the said deponent in my presence on the 22nd day of May, A. D. 1872, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, at the city of S't Louis, county of S't Louis, in the State of Missouri.

Given and certified to under my hand and seal official this 22d day of May, A. D. 1872.

[NOTARIAL SEAL.]

D. D. DUNCAN,
Notary Public, S't Louis, Mo.

319 MAY 24TH, 1872.

CLEOPHAS BAIRD, of lawful age, being produced, sworn and examined on the part of the libellant, deposeth and saith:

1. State your name, age, place of residence, and occupation.

A. My name is Cleophas Baird, though I am usually known as Clede Baird; my age is thirty-one years; residence in Louisiana, Missouri; occupation, a pilot.

2. State how long you have been in such occupation and upon what waters.

A. Since the year 1861, on the Upper Mississippi River.

8. Do you now or have you ever held a license to pilot steamboats on the Upper Mississippi River; and, if so, how long have you held such license, and between what points?

A. I do hold such license, & have held one from Davenport to St. Louis since 1869; my license was extended last June to St. Paul, Minn.

4. Have you piloted steamboats past the town of F't Madison, Iowa; and, if so, during what season?

A. I have; during the season of 1869, 1870, and 1871.

320 5. Have you a personal knowledge of any piers in the Mississippi River, opposite some saw-mills, below and near the town of F't Madison? If so, state how many they are and how they are located with reference to the channel of the river. State particularly and fully.

A. I have a personal knowledge of the piers. There are two. They are right on the edge of the channel. A man can land a steamboat against either pier at any time.

6. Did you ever pass them in the night-time prior to April 23, 1871; and, if you did, was there any light on them or either of them?

A. I have passed there in the night-time prior to that date; I never saw a light on either of them.

7. State, if you know, what the stage of water was at said piers April 23d, 1871.

A. I cannot tell accurately. There was a big stage of water.

8. How far could the upper pier be seen by the pilot of a descending boat at about 11 o'clock at night, if there was no moon, and if there was no light on the pier?

A. It could not be seen at all at that stage of the water, in my opinion.

321 9. If you know, state how the channel of the river ran in April, 1871, commencing at the Fort Madison wharf and describing it until below the lower pier.

A. It was right around the bend close to the Iowa shore, apast and close to the piers.

10. Where does the upper pier stand with reference to the channel of the river?

A. It stands right at the edge of the channel.

11. Is there any sand-bar making out from the Iowa shore between the upper pier and Fort Madison landing; if so, describe it, its location and extent, and what stage of water it is bare.

A. It is not a sand-bar, it is a gravel point, about a hundred or a hundred and fifty yards above the upper pier. It extends from the shore about fifty yards, I think. It is bare about a four-foot stage of water.

12. How close can steamboats run to the end of said sand-bar in a low stage of water?

A. They can land against it.

13. How close can steamboats run to said bar at a high stage of water?

A. They can run over it.

322 14. State, if you know, what the depth of the water is just alongside the upper pier when the river is at a low stage, and also what it is at a high stage.

A. I cannot state positively. There is always room there for boats to run. I would judge there is eight feet there in low water.

15. Prior to the erection of said piers, where did steamboats run with reference to the place on which said piers now stand?

A. We used to go right over where they now stand.

16. What do these piers constitute, so far as their effect upon the navigation of the river is concerned?

A. They are a nuisance; they are an obstruction.

17. State whether the perils of navigation are either increased or diminished by said upper pier.

A. They are increased.

18. State any other matter or anything which you may know of benefit or advantage to either party in this suit.

A. I know of nothing further.

CLEDE BAIRD.

Sworn to & subscribed before me this 24th day of May, A. D. 1872.

D. D. DUNCAN,
Notary Public, St. Louis Co., Mo.

Paid witness $1.25.

323 STATE OF MISSOURI,
County of St. Louis, ss:

I, David D. Duncan, a notary public within and for said county, do hereby certify that Cleophas Baird, usually known as and who subscribes his name as Clede Baird, the deponent, whose place of residence is in Louisiana, Missouri, was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid; that the deponent was examined and his examination reduced to writing by me, who am neither of the parties nor attorney of either or in anywise interested in the suit, and after being carefully by me read over to the said deponent, the same was sworn to and subscribed by the said deponents in my presence on the 24th day of May, A. D. 1872, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, at St. Louis, county of St. Louis, State of Missouri.

Given and certified under my hand and seal official this 24th day of May, A. D. 1872.

[NOTARIAL SEAL.]

D. D. DUNCAN,
Notary Public, St. Louis Co., Mo.

324 WILLIAM KELLEY, being produced, sworn, and examined on the part of the libellant, deposeth and saith:

1. State your name, age, place of residence, and occupation.

A. My name is William Kelley; age, thirty-three years; residence, St. Louis, Mo.; occupation, a pilot.

2. State how long you have been engaged in such occupation and upon what waters?

A. Twelve years on the Upper Mississippi and one year on the Lower Mississippi.

3. Do you now, or have you ever, held a license to pilot steamboats on the Upper Mississippi River; and, if so, how long have you held such license, and between what points?

A. I do now hold such a license, and have held one for all the time mentioned in my last answer from St. Louis to St. Paul.

4. Have you piloted steamboats past the town of F't Madison, Iowa; and, if so, during what seasons?

A. I have every season for twelve years past except one.

5. Have you a personal knowledge of any piers in the Mississippi River, opposite some saw-mills below and near the town of F't Madison; if so, state how many there are and how they are located with
325 reference to the channel of the river. State particularly and fully.

A. I have a personal knowledge of those piers. There are two of them. They are right at the edge of the channel—the upper one especially.

6. Did you ever pass them in the night-time prior to April 23, 1871; and, if you did, was there any light on them or either of them?

A. I have passed them prior to that date. I am pretty positive there was no light on either of them.

7. State, if you know, what the stage of water was at said piers April 23d, 1871?

A. A good boating stage, neither high nor low.

8. How far could the upper pier be seen by the pilot of a descending boat at about 11 o'clock at night if there was no moon and if there was no light on the pier?

A. I don't think it could be seen the length of a boat unless it was a very pretty starlight night, and if one was looking for it knowing it was there, perhaps it could be seen farther.

9. If you know, state how the channel of the river ran in April, 1871, commencing at the F't Madison wharf and describing it until below the low pier.

326 A. It followed the bend all the way closely apast the gravel point and then down past the piers.

10. Where does the upper pier stand, with reference to the channel of the river?

A. At the edge of it, or close to it.

11. Is there any sand-bar making out from the Iowa shore, between the upper pier and Fort Madison landing? If so, describe it, its location and extent, and at what stage of water it is bare.

A. There is a gravel point about a hundred or a hundred and fifty yards from the pier, extending out from the shore forty or fifty yards. It is bare at a very low stage of water, and then not so far as forty or fifty yards.

12. How close can steamboats run to the end of said sand-bar in a low stage of water?

A. Right close to it.

13. How close can steamboats run to said bar at a high stage of water?

A. Over it, if necessary.

14. State, if you know, what the depth of the water is just along the upper pier, when the river is at a low stage, and also what it is at a high stage.

327 A. I suppose six, seven, or eight feet at low water, and three or four times that at high water.

15. Prior to the erection of said piers, where did steamboats run, with reference to the places on which said piers now stand?

A. Very close to, if not over, those places at high water.

16. What do these piers constitute, so far as their effect upon the navigation of the river is concerned?

A. An obstruction to navigation.

17. State whether the perils of navigation are either increased or diminished by said upper pier.

A. They are increased.

18. State any other matter or thing which you may know, of benefit or advantage to either party in this suit.

A. I know of nothing further.

WM KELLY.

Sworn to and subscribed before me this 24th day of May, A. D. 1872.

D. D. DUNCAN,
Notary Public.

Paid $1.25.

328 STATE OF MISSOURI,
County of St. Louis, ss:

I, David D. Duncan, a notary public within and for said county and State, do hereby certify that William Kelley, the deponent, whose place of residence is in St. Louis, Missouri, was by me sworn to testify the whole truth, of his knowledge, touching the matter in controversy in the cause aforesaid; that deponent was examined, and his examination reduced to writing by me, who am neither of the parties, nor attorney of either, or in anywise interested in the suit, and, after being carefully by me read over to the said deponent, the same was sworn to and subscribed by the said deponent, in my presence, on the 24th day of May, A. D. 1871, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, at St. Louis, county of St. Louis, State of Missouri.

Given and certified under my hand and seal official this 24th day of May, A. D. 1872.

[NOTARIAL SEAL.]

D. D. DUNCAN,
Notary Public, St. Louis Co., Mo.

329 JUNE 3D, 1872.

URIAH BROCK, of lawful age, being produced, sworn, and examined on the part of the libellant, deposeth and saith:

1. State your name, age, place of residence, and occupation.

A. My name is Uriah Brock; age, fifty-one years; residence, Summer Hill, Pike County, Illinois; occupation, a pilot.

2. State how long you have been engaged in such occupation, and upon what waters.

A. Thirty years, upon the Upper and Lower Mississippi River.

3. Do you now, or have you ever, held a license to pilot steamboats on the Upper Mississippi River? And, if so, how long have you held such license, and between what points?

A. I do hold such a license, and have held one ever since the license law went into effect, between St. Anthony's Falls and St. Louis.

4. Have you piloted steamboats past the town of F't Madison, Iowa; and if so, during what seasons?

A. I have every season since 1841, up to the present time, except the years 1861, 1862, & 1863.

330 5. Have you a personal knowledge of any piers in the Mississippi River opposite some saw-mills below and near the town of F't Madison? If so, state how many there are, and how they are located, with reference to the channel of the river—state particularly & fully.

A. I have a personal knowledge of those piers. There are two of them. They are on the Iowa side of the channel. The upper one is a little nearer the shore than the lower one, and is set at a sharp point of the shore. The lower one is farther out in the river, and about a thousand feet below the upper one. There is a wide space between the lower pier and the bank than there is at the upper one, so that in high water it looks to be a greater distance out in the river than in low water.

6. Did you ever pass there in the night-time, prior to April 23d, 1871; and, if you did, was there any light on either of them?

A. I have passed them often in the night, prior to that date. I never saw any light on them before that date.

7. State, if you know, what the stage of water was at said piers April 23d, 1871.

A. About a five-foot stage on the lower rapids—a medium stage of water.

331 8. How far could the upper pier be seen by the pilot of a descending boat, at about 11 o'clock at night, if there was no moon, and if there was no light on the pier?

A. Not very far. I should say not more than two or three lengths of the boat; and, if cloudy, one could hardly distinguish even at that distance that it was a pier.

9. If you know, state how the channel of the river ran in Apiril, 1871 commencing at the Fort Madison wharf, and describing it until below, the lower pier.

A. Commencing at the lower wharf, it follows the bend close around, passing the upper piers, and just at the lower pier it makes at stand out about half-way between the Iowa shore and the island.

10. Where does the upper pier stand, with reference to the channel of the river?

A. It stands to the Iowa side of the channel.

11. Is there any sand-bar making out from the Iowa shore between the upper pier and Fort Madison landing? If so, describe it, its location and extent, and at what stage of water it is bare.

332 A. There is a gravel-bar making out from a creek or run above the upper pier, immediately above it. It is not large. It extends a short distance up into the bend; what we term a shore-bar; & is only bare at a very low stage of water.

12. How close can steamboats run to the end of said sand-bar in a low stage of water?

A. They can go right up against it.

13. How close can steamboats run to said bar at a high stage of water?

A. They can run over it.

14. State, if you know, what the depth of water is just alongside the upper pier, when the river is at a low stage, and also what it is at a high stage.

A. It is a good depth of water at a low stage, and better at a high stage.

15. Prior to the erection of said piers, where did steamboats run, with reference to the places on which said piers now stand?

16. They are a nuisance. The worst kind an obstruction.

17. State whether the perils of navigation are either increased or diminished by said upper pier.

A. They are increased greatly.

18. State any other matter or thing which you may know of benefit or advantage to either party in this suit.

333 A. I have been in danger myself of running against those piers, and have barely escaped doing so, even since the lights have been on them. In high water and dark nights, such as we can navigate with safety, we want the shores as land-marks to guide us, and any obstruction like those piers make it hazardous and dangerous.

URIAH BROOK.

Sworn to & subscribed before me this 3d day of June, A. D. 1872.

D. D. DUNCAN,
Notary Public, St. Louis Co., Mo.

Paid witness $3.25.

334 STATE OF MISSOURI,
County of St. Louis, ss:

I, David D. Duncan, a notary public within and for said county and State, do hereby certify that Uriah Brock, the deponent, whose place of residence is at Summer Hill, Pike County, Illinois, was by me sworn to testify the whole truth, of his knowledge, touching the matter in controversy in the cause aforesaid; that deponent was examined and his examination reduced to writing by me, who am neither of the parties, nor attorney of either, or in anywise interested in the suit, and after the said deponent, the same was sworn to and subscribed by said deponent in my presence, on the third day of June, A. D. 1872, between the hours of eight o'clock a. m. and six o'clock p. m., of said day, at the city of St. Louis, county of St. Louis, and State of Missouri.

Given and certified under my hand and seal official this 3d day of June, A. D. 1872.

[NOTARIAL SEAL.] D. D. DUNCAN,
Notary Public, St. Louis Co., Mo.

335 STATE OF MISSOURI,
County of St. Louis, ss:

I, David D. Duncan, a notary public, duly commissioned and qualified within and for said county and State, and duly commissioned for this purpose, do certify that, in pursuance of the annexed commission and notice and interrogatories, came before me at my office, No. 211 North Third street, in the city and county of St. Louis, State aforesaid, at the several times above set forth, being the place and times appointed by me for that purpose, Orlande L. West, David Le Claire, Albert Wempner, Cleophas Baird, William Kelley, and Uriah Brock, who were there and at said several times by me sworn and examined, and such examinations reduced to writing by me, who am neither of the parties, their attorney, nor in anywise interested in the event of the suit, and after being read over by me to each of said deponents, the said depositions were sworn to and subscribed by said witnesses respectively in my presence, and their depositions are now herewith returned.

336 And I certify that neither of the parties to said suit were present, either personally or by agent or attorney, during said examinations, or either or any of them. And I further certify that the other witnesses named in said commission did not appear before me, nor could they, or any of them, be found within this county of St. Louis.

Given under my hand and seal official, in the city & county of St. Louis, State of Missouri, this third day of June, A. D. 1872.

[NOTARIAL SEAL] D. D. DUNCAN,
Notary Public, St. Louis Co., Mo.

STATE OF MISSOURI,
County of St. Louis, ss:

I, Frederick C. Schoenthaler, clerk of the county court of St. Louis County, certify that D. D. Duncan, whose name is subscribed to the foregoing certificate, dated June 3, A. D. 1872, was on said date and from April 6th, 1868, an acting notary public in and for said county, duly commissioned and qualified, and authorized to take depositions;

337 that the signature thereto is genuine, as I believe, and that to all such his official acts, full faith and credit are and ought to be given.

In testimony whereof I hereto set my hand and affix the seal of said

court, at office, in the city of St. Louis, this third day of June, eighteen hundred and seventy-two.

{ SEAL OF COUNTY COURT. } F. C. SCHOENTHALER, *Clerk.*

Fees of notary, 43 pages	$21 50
Seven certificates	3 50
Fees paid five witnesses as noted	6 25
Fee paid county court for certificate of office	50
	$31 75
Postage paid on commission & depositions	45
Paid by libellant	$32 20

D. D. DUNCAN,
Notary Public.

(Endorsed:) Northwestern Union Packet Company *vs.* Samuel Atlee. Depositions for libellant.

Filed June 24, 1872. H. K. Love, clerk, by Erie J. Leech, dep. Filed Oct. 10, 1872. George B. Corkhill, clerk. Notary's fees, as noted within, $32.20, p'd by libellant.

338 District court of the United States for the district of Iowa. In admiralty.

THE NORTHWESTERN UNION PACKET COMPANY
vs.
SAMUEL ATLEE.

Depositions of witnesses taken before J. L. Rice, a special commissioner appointed by the court to take depositions in said case, commencing on the 21st day of August, 1872, and taken on the part of libellant. Present, J. Haem Davidson, esq., and Howell & Rice, att'ys for pl'tff, and McCreay, Miller & McCreary and P. T. Lomax, esq., att'ys for respondent.

GEO. W. DUNCAN, witness of lawful age, for libellant, being by me first duly sworn deposes and says, in answer to the following interrogatories:

Ques. 1. What is your name, age, and place of residence?

Ans. Geo. W. Duncan, age 37 years, and live in La Crosse, Wisconsin.

(Taken down in narrative form by consent of parties, except when parties desire to have question written out.)

339 I am master of a steamboat, the G. H. Wilson, and am a licensed pilot. She belongs to the "People's Line." Have been steamboating since the spring of 1857, in all capacities from roustabout up to master, except engineer and cabin work. Have steamboated past F't Madison more or less every season since I have been steamboating. I have some idea of the upper pier near Atlee's mill, and of the channel there; the channel runs pretty near the piers. Leaving the landing at F't Madison we come down the bend all the way to the piers, we give the shore a berth in order to keep clear of it; we leave the pier on the starboard side; a boat coming down there generally has more or less

flanking-way, sliding off sideways, more especially with barges in tow; we go down past the piers and run down abreast the Park House below, and then cross over towards the east side of the river. It is shallow out to the left of the pier. The effect of the shallow water
340 is to throw the current towards the piers; there is good water outside the upper pier for boats. I think boats can land alongside of the piers now. I have been down in low water with barges and have run alongside of them, probably the width of a barge; this was two years ago, I think.

In the night-time the piers cannot be seen far by the pilot of a descending boat unless there is a light on it. Don't know that I ever saw light on upper pier before the accident. Don't know that I have since. I think there is a little bar making out from shore above the upper pier, making out from the creek above the pier. At a high stage of water boats can pass over this bar.

I think the upper pier is considerably in the way; they are where boats could run if they were not there. There is nothing except the pier and logs, &c., lying there to prevent boats running over where piers are.

Question. In your judgment, what does that pier constitute with reference to the navigation of the river?

341 (OBJECTION.—Objected to as incompetent.)

Ans. It constitutes an obstruction to navigation.

Question. In your judgment, does that pier increase or decrease the perils of navigation?

Ans. In my judgment it increases the perils of navigation.

I was acquainted with the barge Jack Reaney. I saw her in the fall of 1870, and towed her then as a bulk-grain barge to carry grain in bulk; think she would carry ten thousand bushels of wheat. A bulk-grain barge is one that is sheat'ed up tight inside with any kind of lumber that will make her tight, with a cargo-box or . Her condition was good the last time I saw her before she was sunk. The last time I saw her before she was sunk, I think the barge was worth from $3,000 to $3,500.

I was freighting on the river last season, between S't Louis and Galena, all of May and June and into July; freights were plenty along the
342 river. There was demand for that class of barges. The barge Jack Reaney in good condition during those months would have been worth for freighting $20 or $25 per day. I was freighting last season for the Northwestern Union Packet Company; bulk-grain barges are worth more than other kind' of barges to carry bulk grain. They are not worth more to carry other kinds of grain; bulk-grain barges save the use of tarpaulins. I saw the Jack Reaney after she sank; she was lying in the water, one end out of water, near the Park House, below F't Madison. This was some time in June, 1871. On my way from S't Louis, I landed alongside of the barge Jack Reaney with the steamer Jennie Baldwin, for the purpose of raising her; I ordered some lumber there to build a bulk-head before I examined the barge. I took of' my clothes and got down into the water to examine the barge; on examination I found that the barge was broken half-way in two; she was broken down her side from her decks to her knuckle, and from
343 her knuckle to her main kelson, which runs through the barge fore and aft. I hauled broken timbers from her that were broken off right by side of her main kelson; the way she laid, the part that lay on the river was dropped down some eight or ten inches below the forward part that lay on the bank. The cargo-box was badly broken up, and her grain-floor was broken out of her right into her main kelson from her knuckle. Her hog-chain wass off of her and lying in the water, the biggest

part of it. Her deck-frame was broken, some of her carlings were broken, and what they call the bridge on barge was broken. The stem of her lay in some four and a half feet of water, perhaps more; the end that lay on the shore lay a number of feet on the shore on dry land; I did not raise her.

Question. State why you did not bulk-head the broken part and raise the barge.

(OBJECTION.—Objected to as incompetent, he not being *passed* to be an expert in ship-building.)

344 Ans. The barge was so badly broken that I thought it would be an impossibility to bulk-head her, and that in order to repair her she would have to be hauled out from where she lay, which was done afterwards. She was repaired where she lay, and was either hauled out or screwed up. I took with me a steamboat-carpenter. I went there to raise her with orders from Capt. Davidson to raise her if I could. I have seen the barge since she was raised and repaired. Her cargo-box was gone; her grain-floor was gone; her hog-chain has been put *with* her since, I think, but am not sure. I am not a ship-carpenter.

Cross-examination:

I do not know where the Jack Reaney is. Do not remember where I saw her last. When I last saw her I think she was lying at the bank opposite to Burlington. I do not know whether the Northwestern Union Packet Co. run her after she was raised. Don't remember of seeing her at any other place than Burlington after she was re-

345 paired. I do not know what boat took here there. I did not examine her particularly when she was at Burlington. I am not positive, but think there was a hog-chain on her then. I cannot say how far it is from the mouth of the creek where the bar is to the pier. Cannot say how far this bar extends out into the river.

Question. If that bar extends between three and four hundred feet out from the mouth of the creek into the river from actual measurement, how are you going to get to that pier with a steamboat coming down the *the* river, if the pier from actual measurement is only 128 feet from the pier to the top of the bank?

(OBJECTION.—Objected to as irrelevant and immaterial as presenting a supposition not founded on any fact proven, and which the witness cannot answer intelligibly without reference to the high stage of water that prevailed at the time of the accident. Question withdrawn.)

346 Question. At the present stage of water can a boat run over that bar from the mouth of French Creek?

(OBJECTION.—Objected to as immaterial and as having no rel'vancy to the condition of the river that existed at the time of the accident.)

Ans. It is owing to how close in to the shore that they get.

Quest. Is not the greater part of the bar *not* now covered with water?

(OBJECTION.—Objected to as immaterial.)

Ans. I think a part of it is covered with water. Cannot say how much.

Quest. Can a boat run over that bar at a low stage of water?

Ans. I do not know. I have not run over it myself.

Quest. Did you ever see any boat run over that bar at a low water?

Ans. No; but any boat can run over at high water.

Quest. Is not the channel in front of the pier at this time; does it not extend nearly over to the island at this stage of water?

Ans. If it does we don't run there. Steamboats do not run over
347 to the island. They run down the Iowa side, nearer the Iowa shore than they do the Illinois shore, until we get by the piers, then we make a crossing to the Illinois side.

Question. Have you not known the mills to be there for a number of years before the accident to the Jack Reaney?

Ans. I have. I think I have seen rafts of logs near the mills there before the piers were put up.

Question. Are there not many piers along the river for booms in front of saw-mills?

(Objected to as immaterial and irrelevant.)

Answer. Yes, sir; there are piers at various places in front of saw-mills.

Question. When you said a while ago "we come down the bend of the river with boats all the way to the piers from F't Madison landing," did you not refer to the bend as the river is when the water is high?

Ans. No, sir; we come down the bend and keep far enough from the shore to keep clear of obstructions.

Quest. What obstruction did you refer to?

Ans. The bar at the mouth of the creek for one.

348 Ques. How far does the bar at the mouth of the creek throw boats out from the shore as the water is now, or as it is at low water?

(OBJECTION.—Objected to as immaterial and irrelevant.)

Ans. I cannot say how far. Have not noticed that in particular in coming down there.

Ques. Do you not have a good, deep, wide channel from the outside of the bar diagonally across to the island towards the Illinois shore?

Ans. I do not know. I have not been across there. Don't know as I ever went across there.

Quest. Have you not seen rafts in front of Altee's mill extending as far out into the river as the upper pier?

(OBJECTION.—Objected to as immaterial.)

Ans. I think I have.

Ques. When the river is high pilots do not always follow the channel as it is when it is low?

Ans. No. When the river is high pilots sometimes run over places that are dry in low water, if they are sure there is water enough to go without any danger. Where the upper pier stands I think there
349 is water enough for boats to run in low water.

Ques. Could you run with a boat over the ground where the upper pier stands in low water, if the pier was removed?

(OBJECTION.—Objected to as immaterial.)

Ans. I don't know; cannot answer it; have not been in there to see.

Redirect examination:

Quest. Where does that upper stand with reference to the navigable channel of the river at that point?

Ans. I think it stands on the edge of the channel on the Iowa side.

Witness fee, $1.50.

Mileage.—Claims mileage from Po't Byr'n, Ill., 170 miles coming and returning.

G. W. DUNCAN.

Subscribed and sworn to before me this 21st day of August, 1872.

J. G. RICE,
Commissioner.

350 JAMES RUBY, witness of lawful age, for libellant, being by me first duly sworn, deposes and says, in answer to the following interrogatories:

(Taken in narrative form by consent of parties, except when the parties desire to have questions written out.)

My name is James Ruby. My age is thirty-nine years, and live in Rock Island, Ill. My occupation is that of a pilot of Miss. River. I am a licensed pilot, and have been since 1854 or 1855. I am accustomed to piloting steamboats past F't Madison, and have been on what are known as Rapids packets since 1860. I am familiar with the channel and with the piers near Atlee's mill. I was running steamboats by them as pilot in spring of 1871, and in the month of April, 1871, was on the steamboat Rock Island, owned jointly by the Northern line and Keokuk of St. Louis Packet Company on the 23 of April, 1871. My recollection is that it was high water.

351 When we leave the levee at F't Madison, we stand out from the shore a little way, and come close into the bend again at the foot of the second street below the R. R. depot, then follow the shore and run the bend out, passing between the bar and this upper pier. This bar is the one out from the site of the bend; then in the middle of the river, extending from the Illinois shore to the channel, and extending from near opposite the landing to down just below the upper pier. The extreme point of the bar extends below the upper pier.

In running the channel, it is customary to run the middle of the channel between the sand-bar and the pier. The effect of sand-bar on descending boats is that, if men running steamboats get too close to sand-bar, it will cause to run off from the bar. That would bring the boat closer to the piers. There is a little gravel-bar above the upper pier, say a couple hundred yards, probably more; never noticed particularly,

352 and would not want to state particularly, but somewhere in that neighborhood at the stage of water which prevailed on April 23, 1871. Steamboats could run over this gravel-bar.

Ques. State whether, with the water at the stage which prevailed on or about April 23, 1871, that gravel-bar would be any obstruction to a large side-wheeled steamboat running straight down the bend close to the shore to or against the upper pier?

Ans. It would not. I have run over the ground, where upper pier stands, with steamboats, a great many times. This was at high water stage. I have made landings to the shore there three times a week for three or four weeks at different seasons. The occasion of our landing there was the cause of the bad condition of the railroad across French Creek. It was unsafe for cars to pass over the trestle-work of the bridge, and we landed there on this account to deliver our freight and passengers. We landed at point below mill where piers now stand.

353 The upper pier was not there during period of navigation in 1870. Do not remember definitely when navigation opened in spring of 1871. To the best of my recollection we started out with our boat, the Rock Island, that spring the second week in April; we were rather later than usual getting out that spring.

Ques. When did you first learn the exist' of that pier, and under what circumstances? Give particulars fully.

Ans. The first knowledge I had of the existence of that pier was from seeing it from the pilot-house of steamboat Rock Island on the night of our first trip down on the spring of 1871. The night was dark and the wind was blowing. We were running down there in customary way, and when about abreast, or nearly abreast, of this pier, discovered it,

and barely missed it with the boat. I was on watch at the wheel; there was no light on the pier. I think I might possibly have seen it, if I had known it was there, two lengths of the boat, not farther.

I understand that the pier stands on the edge of the channel on the Iowa side.

354 Ques. What effect has it on the navigation of the river, if any, with reference to the perils and dangers of navigation?

Ans. It increases them materially without a light on it.

Ques. How would it be with a pilot having no knowledge of its existence, descending in night-time?

Ans. Under the same circumstances under which I discovered it, he would be very likely to strike it; the chances would be ever, anyhow. The pier has been lighted since the accident.

Ques. In your judgment, as a pilot, what does that pier constitute with reference to the navigation of the river?

(Objected to as not competent.)

Ans. It constitutes an obstruction.

Q. State circumstances which occur to your mind under which steamboats and barges might be greatly endangered by the existence of that pier?

Ans. At a certain stage of the river between high and low water, we mount this reef, at a point just above this pier, at this stage of water, and in the night, a pilot coming down the river, would desire to

355 drop off that reef at that point, and would be in great danger of hitting that pier; should the wind be blowing down stream or from the Illinois shore, it would increase the danger. Running in low-water stage, arriving at the point where this gravel-bar is, in order to overcome the flank movement of the boat, it would be necessary to hold her up toward the reef. By so doing would be liable to get too close to the reef, and that would cause her to run from it toward the pier in spite of the rudder.

Ques. When log-rafts are moored to the shore, lying by over night, state whether lights are kept on them to warn passing boats and other rafts of their location?

Ans. Invariably.

Cross-examination:

The channel at ordinary stage of water in the river at the upper pier at Altee's mill is, I should think, in the neighborhood of three hundred feet wide.

Ques. Is it not the most prudent course for a pilot of a descend-

356 ing boat in Miss. River to keep his boat in middle of channel?

Ans. When possible to do so, it is.

Ques. Is not this the usual practise of pilots?

Ans. They always endeavour so to run.

Ques. If a pilot should pursue this course, how far would he run from the upper pier at Atlee's mill?

Ans. I cannot tell you. A man might be endeavoring to run in the center of the channel and get a good ways from it. If he should run in center of channel, of course he would be about one hundred and fifty feet from the pier; under almost any circumstances it would be the exception instead of the rule, if we got her in center of channel at that particular point.

Ques. Has not Atlee had rafts lying along near that pier since that pier was erected seventeen years ago?

(Objected as irrelevant.)

Ans. His rafts have usually lain above when piers are erected close under this gravel-bar.

Ques. About how long are they usually?

357 Ans. I guess they are two hundred feet, maybe more, maybe less.

Ques. When you landed in front of Atlee's mill to accom'odate the railroad, did you run on the outside or inside of the rafts?

Ans. On the outside, and came in below there.

Ques. Did you come over the gravel-bar, at mouth of French Creek, or did you go outside of it, when you made these landings?

Ans. Went outside of it.

Ques. Then to make the landing you went outside of the gravel-bar or delta, at mouth of creek, and outside of the rafts, and came in to the landing below the raft and delta, at the mouth of the creek; is that so?

Ans. Yes, sir.

Ques. If the water had been right high, and there had been no raft there, you could have run down the Iowa shore over the delta or gravel-bar, I suppose?

Ans. Yes, sir, I could.

Ques. How much is the water at this present stage above the lowest stage of water at F't Madison?

358 Ans. I had not been along there for some time, but I think above the stage of 1864, probably three feet—two or three feet higher. That was the year of extremely low water.

Ques. Is not at least half of that delta at French Creek, at least from 15 to 20 inches, out of water at this time?

(OBJECTION.—Objected to as immaterial and irrelevant.)

Ans. Cannot state. Have not been by there for two months. Have been by there, but it was in night. I presume it is out.

Ques. How much higher than the water is now would it have to be to let the Phil. Sheridan pass-over that gravel point at mouth of creek?

Ans. It would have to be five feet higher. She could go over without striking when water was four and a half feet higher. A pilot going down there at that stage of water would try to keep her off. At five feet he would not care. In my judgment the channel is, at gravel-bank at mouth of French Creek, two hundred and fifty feet wide, pos-

359 sibly more, but I don't think it is three hundred feet. On the Illinois side of channel, at mouth of French Creek, there is a sand-bar. This bar is 250 feet out, may be more. I never measured it.

Ques. Then not in high water, but ordinary stage of water, the channel would be between the gravel-bar at mouth of French Creek, on Iowa side, and the sand-bar towards the Illinois shore; is that so?

Ans. Yes, sir; in front of the pier to the said bar the channel is full three hundred feet. When I say channel, I mean where steamboats run. It may be deep or shoal. I mean where steamboats usually run.

Ques. Do pilots generally consider that the channel is where steamboats usually run without reference to depth of water?

Ans. Yes, sir.

Ques. Has not the channel below F't Madison frequently changed more or less, within the last seventeen years?

Ans. It has.

JEROME RUBY.

Witness fees, $3.00.

360 Mileage were paid by pl't'ffs.

Subscribed and sworn to before me this 21st day of August, 1872.

J. L. RICE, *Comm'r.*

AARON A. SCOTT, witness of lawful age, for pl't'ffs, being by me first duly sworn, deposes and says, in answer to following interrogatories:

My name is Aaron A. Scott; live in F't Madison; am 38 years of age. My occupation is that of harness-maker trade. Have worked around stationary engines. On April 23, 1871, I was employed by Sam'l Atlee, def't, at the mill. Had been there at work *there* since 1869. I think I know about the location of the upper pier at Atlee's mill. That pier was cribbed up in winter of 1870–1871—winter before the accident. I have seen steamboats run over place where pier now stands, before it was built; cannot say how often—a number of times. Packets
361 could not land above and landed there. They could have landed above, but bridge at French Creek was out of order. Before upper pier was built, Atlee moved his rafts right under the reef of that gravelly bar. As a general thing he kept lights on them. Prior to this accident he did not, to my recollection, keep lights on upper pier. The summer before, while putting rock in a portion of them, *in* there was a time that he had lights on that rock-pile. That was before it was cribbed up. After the accident he put lights on the upper pier—I think likely the next night. He put lights on it so that it might be seen by passing boats. At the time of the accident there was a few logs inside of pier or somewhere about there; I don't think there was a raft; not logs enough to amount to anything. I saw the barge there after she was sunk. On April 23, 1871, it would be considered high water I should think. I cannot tell how long it was before I was on barge. It was while Hamson West was getting the lead out of her. The water
362 around upper pier (I have been out on it fishing) is at present time about six feet; I have not measured it.

Cross-examination:

Ques. You have said that in summer of 1870, the summer before pier was cribbed, that there was a pile of rock where pier stands, which Atlee kept a light on; is that so?

Ans. I said he kept a light on it a part of the time.

Ques. How far did that pile of rock reach above the water in summer of 1870?

Ans. The highest I recollect of seeing it was about a foot or eighteen inches above water.

Ques. Was the crib built right on that pile of rock?

Ans. Yes, it was.

Ques. How near to that pile of rock did boats generally pass, along in summer of 1870?

(OBJECTION.—Objected as not being cross-examination, and because witness has not shown any competency to testify as an expert.)

Ans. The generality of them, I should judge, has 40 yards outside. Some of them less than that.

363 Ques. Did you see boats passing that pile of rock, every day during that summer, when you were at Atlee's mill?

Ans. Not every day; I would not have noticed them if they had passed every day. Saw them often.

Ques. About how wide and how long was that pile of rock, before the cribbing was put on it?

Ans. At the base, I could not tell how it was. They were thrown in loose. It might have been sixteen to 20 feet wide at the top.

Ques. Was that rock-pile that was there in 1870 so conspicuous as to be readily seen by persons on boats passing in the channel in front of it?

(OBJECTION.—Objected to as not cross-examination.)

Ans. In daylight, I suppose you could see it when it was eighteen inches out of water.

Ques. When the packets landed against the shore by Atlee's mill, and crossed the water where pier now stands; that was some four or five years ago, I believe, was it not?

Ans. It was that or more. Boats have loaded there and wooded
364 within two years, and some of them loaded there last summer.

Ques. The packets that landed there went outside of the gravel-bar at mouth of French Creek, and outside of Atlee's rafts and dropped in below, did they not, to be enabled to reach the landing?

Ans. When they had rafts there they went outside of them; when water was so low they had to run around the bar, they had to run around them.

Ques. Did you see that bar this week?

Ans. I have, a portion of it.

Ques. If you have, is not about half of it out of water?

Ans. Yes; I should judge as much as that.

Ques. Then when you say you saw boats running where the piers now stand, did you not refer to boats that came to wood, and when the R. R. bridge was out of order?

Ans. I have seen boats running where piers now stand that did not come to wood, and when the bridge was not out of order; but as a general thing it was in high water.

Ques. Where do boats run in present stage of water, as compared with that pier; how far outside?

365 (Objected to as not being cross-examination, and because witness is not competent to testify as an expert as to running of steamboats.)

Ans. I should judge they run from 40 to 50 yards outside that pier. I don't know anything about it; I only guess at it.

Redirect-examination:

Ques. Upon the top of that stone-pile in season of 1870, was a foot or eighteen inches above the water; what was the stage of water?

Ans. I suppose it would be considered a low stage of water. Do not know exact stage of water. I' was while rock were there above water that they placed lights on water.

Recross-examination:

Ques. Was not that pile of rock used in 1370 by Atlee for his rafts, to lay against and to hold the boom?

Ans. I think I saw him drop his boom outside of that pile of rock.

Ques. Have you not seen rafts lying outside of that pile of rock, and extending farther out than that pile of rock in 1870, and resting against that pile of rock?

Ans. I have.

A. A. SCOTT.

366 Winess' fees, $3.00; mileage, 2.50=$5.50; paid by pl't'ff.

Subscribed and sworn to before me this 22d day of August, 1872.

J. L. RICE, *Com.*

O. M. RUBY, witness of lawful age, for pl'ff, being by me duly sworn' deposes and says, in answer to the following interrogatories:

My name is O. M. Ruby; age 36 years, and live in Buffalo, Iowa. My occupation is a steamboat-pilot. I am licensed by the Government, and

have been for fourteen years; have run by town of F't Madison as pilot fourteen years. I piloted by there during season of 1871, and part of 1870; am familiar with channel of river from F't Madison down by the piers at Atlee's mills, and with the location of the piers.

Ques. What stage of water prevailed in the river about April, 1871, at F't Madison?

Ans. As near as my memory serves me, it was pretty good
367 stage of water; would consider it a high stage.

Ques. Describe how boats usually run, leavin' F't Madison, down by the pier.

Ans. We leave the F't Madison landing and run the natural shape or course of the bend, aiming to keep in the neighborhood of from 100 to 150 yards from shores. Going down there in the night, if we should get out near the outside bar, boats are liable to run off in towards the piers, and there is danger of hitting them; never measured around upper pier, but have thought there is water enough to land alongside of it. I have run over with steamboats the place where pier now stands. In coming down stream with stern-wheel boats we round them to generally above where we want to make the landing, and let them flank in along down the shore until they get down where we want to land; and we have made the landing, as near as my memory serves me, about abreast of the lower pier; it might be a little above lower pier.

I am familiar with the gravel-point that makes out from French Creek.

368 Ques. At the stage of water which prevailed on or about the 23d of April, 1871, was not the water deep enough over that gravel-point to prevent the steamer Phil Sheridan to run over it and strike against the upper pier?

Ans. It might have been, provided they could hold the boat in.

My experience in piloting is that a boat is liable to run off from those places that are shoal and run out and get too near the outside-bar; then they would be liable to run back in again.

Ques. Had you passed that upper pier in the night-time prior to this accident?

Ans. Yes, sir.

Ques. Was there any light on it?

Ans. No, sir.

Ques. Has it been lighted since the accident?

Ans. Yes, sir.

Ques. How does that pier stand, with reference to the navigable channel of the river at that point?

Ans. I should judge it stood in the side of the channel.

Ques. In your judgment, as an expert, what effect, if any, has it upon the perils and dangers of navigation?

369 (OBJECTION.—Objected to as incompetent.)

Ans. I should claim it to be an obstruction, before lights were put on it particularly. I have seen log-rafts moved along the Miss. River. They usually have lights on them; sometimes not. I know Cephas B. Gall, a pilot on the river. His reputation on the river as a river pilot, I believe, stands No. 1 where he is posted.

Cross-examination:

Ques. Do you know whether the gravel-bar at mouth of French Creek is out of water at this time or not?

Ans. Yes, sir; it is out.

Ans. In daylight, I suppose you could see it when it was eighteen inches out of water.

Ques. When the packets landed against the shore by Atlee's mill, and crossed the water where pier now stands; that was some four or five years ago, I believe, was it not?

Ans. It was that or more. Boats have loaded there and wooded
364 within two years, and some of them loaded there last summer.

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Ques. Had you passed that upper pier in the night-time prior to this accident?

Ans. Yes, sir.

Ques. Was there any light on it?

Ans. No, sir.

Ques. Has it been lighted since the accident?

Ans. Yes, sir.

Ques. How does that pier stand, with reference to the navigable channel of the river at that point?

Ans. I should judge it stood in the side of the channel.

Ques. In your judgment, as an expert, what effect, if any, has it upon the perils and dangers of navigation?

369 (OBJECTION.—Objected to as incompetent.)

Ans. I should claim it to be an obstruction, before lights were put on it particularly. I have seen log-rafts moved along the Miss. River. They usually have lights on them; sometimes not. I know Cephas B. Gall, a pilot on the river. His reputation on the river as a river pilot, I believe, stands No. 1 where he is posted.

Cross-examination:

Ques. Do you know whether the gravel-bar at mouth of French Creek is out of water at this time or not?

Ans. Yes, sir; it is out.

Ques. Is there any stage of water at F't Madison lower than the present stage; and, if so, how much lower has it been?

Ans. I think it has been a foot lower.

Ques. To get into the landing by the pier in coming down the river at present stage of water you would have to run clear outside of the bar at the mouth of French Creek and then round into the Iowa shore; would you not?

Ans. No farther than if we were going by without landing.

370 Ques. How far from the upper pier in front of it do you usually pass in boats going up and down the river?

Ans. I should judge in the neighborhood of a hundred feet. I should judge the distance of boats passing from piers, as I have observed, is usually 100 feet; sometimes less, sometimes more.

Ques. Has not Atlee for many years usually had rafts lying in front of and above his mill?

Ans. Yes, sir.

Ques. Do not these rafts often project farther out than the pier?

Ans. Yes, sir; outside of the upper pier on a line parallel with the direction we run. I should not think they projected outside of the lower pier.

Ques. Was not that crib-work put up in winter of 1870–1871?

Ans. I believe it was; would not be positive. It had not been there a great while, I know.

Ques. How large was the stone-pile which was there in 1870, and on which the crib was erected?

(OBJECTION.—Objected to as not being cross-examination.)

371 Ans. I do not know how large it was. I should think it stuck out of water about three feet; sometimes less, sometimes more, at low stage of water.

Ques. When do boats usually run nearest to the pier? Is it high water or low water?

Ans. In low water. They run equally near in high water when they run the channel.

Ques. Did you not live a number of years at Fort Madison? If yea, state what years and what you followed for a living.

Ans. I don't remember the year I went there exactly. I lived there altogether seven years. I left there three years ago. I followed piloting then and do now.

Ques, Did you say that you have seen boats, passing up and down the river, run where that pier stands?

Ans. I have seen boats at high water run very near that shore; have run very near it myself.

Ques. How would you get past the mills-rafts to get near the shore?

Ans. Once in a while the time has been when Mr. Atlee would not have many logs in there. In case of wind on shore, we might get blown in there pretty close.

372 Ques. What is the route of boats usually, when water is high, in regard to the gravel-bar at the mouth of French Creek; do they pass over it or around it?

Ans. They aim to keep outside of it.

Ques. Why do they aim to keep outside of it when the water is high enough to pass over it?

Ans. Because boats do not generally steer very well over shoal water.

Ques. What is the usual route of boats when the water is four or five feet deep on the gravel-bar at the mouth of French Creek?

Ans. The usual route is the same as when it is dry. There are times when boats will go down the middle of the river over the outside bar.

Ques. You have said that Mr. Gall is a good pilot when he is posted. Suppose Mr. Gall had run many years on the Miss. River as a pilot and was all that time recognized as a first-class pilot, and then would have been away a year or two, and not have seen the piles of stone in 1870, and not have seen the pier erected on these stones in the winter of 1870, would he have been sufficiently posted to pilot the steamer with
373 barges attached, in the neighborhood of the gravel-bar and said pier in the night-time?

Ans. No, sir; I should not consider he was.

Ques. Is not that a place where the channel was more or less changed since your acquaintance?

Ans. No, sir; not materially. It changes a very little.

Ques. Some of the witnesses have spoken in regard to the tendency of a boat approaching or passing a reef or sand-bar to flankage. How much birth would a competent pilot give a reef or sand-bar to avoid or overcome this tendency?

Ans. They would give enough to prevent it. Some give more and some less, probably. In the night they might think they were keeping far enough away to avoid it, but at the same time get so near that their boat will flank or run away from it.

Ques. How many feet birth?

Ans. The width of his boat; probably forty or fifty feet, thirty feet, and so on. Sometimes it is necessary to run these reefs very close, within ten feet.

Ques. What is the width of the channel of the river opposite the upper pier?

374 Ans. About three hundred feet.

Ques. Is not the prudent course of a pilot of a descending boat to keep his boat in the middle of the channel?

Ans. Yes; when it is light so that he can see. We are not supposed to see as well at night as we do in daylight.

Ques. If a boat is kept in the middle of the channel, opposite the upper pier, is there any tendency at that point to flankage towards the Iowa shore?

Ans. In some cases there would be, and in some there would not. A boat having a barge in tow in the night, coming down, is liable to get a swing, and the barge pull her off towards the Iowa shore.

Ques. Is that owing to what you call flankage?

Ans. No, sir; I don't call that flankage.

Redirect examination:

Ques. Is it as easy for a boat descending with a barge in tow to maintain her course steadily in or near the center of the channel as without any tow?

Ans. No, sir.

Ques. You and other pilots of its being usual for boats in
375 general to keep near the center of the navigable channel; is it not a fact that boats readily do vary, more or less, to the extent of perhaps 50 or 100 yards from the mathematical current?

Ans. Yes, sir, in some places. There is room opposite the pier for boats to run perhaps 100 yards from the mathematical center, in or out.

Ques. When the river is at a high stage and rising, is not the center of the river highest, thereby causing surface-current to throw floating objects or vessels right or left from the middle of the stream?

Ans. That is the general opinion of river-men, I believe.

Ques. Under such circumstances, with water at a high stage, do not pilots select their course wherever there is plenty of water, without particular regard to the meanderings of the current or channel, which they necessarily follow at a low stage of water?

Ans. Yes, sir.

Ques. Under the circumstances mentioned by counsel in cross-examination, if there had been a signal-light placed on the upper pier
376 would not Gall have been competent to have taken the Sheridan and barge by it in safety?

Ans. Yes, sir; if there had been a light on it.

Ques. Was the channel by Atlee's pier more or less difficult to navigate in April, 1871, than the present season?

Ans. Yes, sir; it was before the lights were put on the pier. It was more difficult to pass the pier before the lights were put on than it is now.

Ques. You have spoken of seeing rafts moored opposite Atlee's mill for a number of years past. State whether these rafts usually had lights on them in the night-time or not.

Ans. As near as my recollection serves me they had.

Recross-examination:

Ques. How many piers to hold rafts are there in front of saw-mills on the Miss. River between here and St. Paul?

(*Crossed* for libellant objects to this question and all that follow it that may relate to other mille-piers on other points on the Miss. River as immaterial and irrelevant.)

377 Ans. I don't know that I can answer it. There is one here, one at Burlington; I believe there is one or two at Muscatine, one at Lyons, one or two at Clinton. I don't remember of any more until we get to Winona—one or two at Alma. That is all, I believe, that I think of.

Ques. Are lights usually kept on the boom-piers in the Mississippi?

Ans. I have seen lights on several of them, and on several of them I have not.

O. M. RUBY.

Witness fees, 3.00. Paid by pl't'ffs.

Subscribed and sworn to before me this 22d day of August, 1872.

J. L. RICE, *Comm.*

378 HENRY G. CARSON, witness of lawful age, for libellant, being by me first duly sworn, in answer to the following interrogatories deposes and says:

My name is Henry G. Carson; age about 55 years, and live in St. Louis, Mo. My occupation is that of a pilot on the Miss. River, from New Orleans to mouth of Minnesota River about St. Paul. I have a license as pilot. I have been piloting on the Miss. River, and been captain and in other capacities nearly forty years.

I am familiar with channel of the Miss. River below F't Madison, and with the location of the piers near Atlee's mill. I have been engaged in piloting by there nearly forty years, though there were several seasons that I was absent. I piloted by them in 1869; in 1870 I did not. In 1871 I did on the Lake Superior as chief pilot. I have very frequently piloted boats over the very spot where the upper pier now stands, and in different seasons. It was generally at a good stage

379 of water, but I have been over it at a low stage of water, in as low water as it is now.

Ques. If the pier was now removed at the present stage of water, could regular packet-boats run over the spot where pier now stands?

Ans. The packet-boat or any other could run *run* over it if she wished to; any boat that could cross the rapids.

Ques. Describe the channel of the river, as usually run by steamboat-pilots, from F't Madison down past the upper pier.

Ans. The channel of the river runs from F't Madison down the Iowa shore, but not very close, until you get in below the mouth of the creek; then it keeps down by the pier at Atlee's mill, and then makes a long crossing over towards the Illinois Island. The channel runs close to the pier. If the pier is in a part of the channel——

Ques. What do you mean by the channel?

Ans. Anywhere it is deep enough for a boat to run in low water.

Ques. Is the upper pier within the channel, and where boats did usually run prior to its erection?

(Objected to as leading.)

Ans. I have seen a great many boats run where pier is and
380 close to shore, and have run there myself.

Ques. With reference to the navigation of the river, what does that pier constitute?

Ans. It is an obstruction to the free navigation of the river.

Ques. What effect, if any, has it upon the perils and dangers of navigation?

Ans. A pier in the Mississippi River increases the danger of navigation.

Ques. State how.

Ans. Because sometimes, although we may see them, throug' stress of weather or unnavigableness of the boat she might be driven against it. In regard to that particular pier, I left F't Madison last year with the Lake Superior, with a barge on the starboard side and wind blowing a gale, and it was with the utmost difficulty I could keep her off those piers. I had to stop one wheel, and work strong on the other one, to pull her away from the piers and shore.

Ques. State whether, under such circumstances as these you have detailed, a collision with the pier would be more or less perilous than a collision with the shore.

381 Ans. It would be greatly more perilous. I know there is a gravel-bar above the piers, washed out from the Iowa shore and creek.

Ques. How far out does the gravel-bar extend, in comparison with the distance of the pier from the shore?

Ans. I don't think it gets dry any farther out than what the pier is from the shore.

Ques. Out beyond where it gets dry does the bar gradually slope off into deep water, or does the current cut off the point of the bar somewhat abruptly?

Ans. I think it goes off somewhat abruptly, but more from the stoppage of the washing from the creek than from the current cutting it off.

Ques. At a low stage of water suppose a descending boat should run in as close as possible to the point of that gravel-bar and continue down stream in a straight line, would she probably strike the pier, or would she pass side it?

Ans. I think she would strike the pier if she run in a straight line with the shore.

382 At a high stage of water, what depth is there over that gravel-bar?

Ans. It varies from the edge of it from ten feet to perhaps fifteen feet; the closer you get to shore the higher it gets.

Ques. Do you know about what stage of water prevailed about April, 1871?

Ans. I do. It was a good stage; there was about five feet on the rapids. That makes a big stage of water in the river.

Ques. At that stage, was there water enough or not for the steamer Phil Sheridan with the barge in tow on the starboard side to pass right over the bar and descend against the pier?

Ans. There was.

Ques. At the stage of water which then prevailed, about how much of the top of that pier was there above water?

Ans. I don't know.

Ques. How far, to the best of your judgment, could the pilot of a descending boat, in a hazy night after moon-down, with the water at that stage, see the pier?

383 Ans. Not very far; and some nights he could not see it ten yards.

Ques. Is there a sand-bar, or reef, opposite the bite of the bend? If so, describe its location and effect on the current and boats navigating at that point.

Ans. There is a bar opposite the bite of the bend, and the tendency of the water is to run off the bar into the channel. It has to, for there is no other place for it to go. The effect of a boat running any bend is to flank into the bend.

Ques. Suppose the pilot of a descending boat should head his boat up under the reef, and should approach it too closely, what would be the effect on the boat?

Ans. When the boat approaches a bar or shoal water she invariably wants to run away from it. In this locality it would throw her into the bend.

Ques. Do you know Cephas B. Gall?

Ans. I do, and have for a great many years; for 25 years.

Ques. What is his general reputation for competency and ability as a pilot?

Ans. His reputation as a pilot is good.

Ques. What effect, if any, would absence from a particular
384 portion of the river for one whole season have upon his competency to pilot a steamboat over that portion of the river, say that portion of the river from F't Madison landing down by Atlee's mills?

Ans. It would not affect his competency at that particular place, because there has been no particular change in the channel in that place for many years that would affect it at that stage of water.

Ques. Are not pilots frequently absent a season from portions of the river over which they hold a license to pilot steamboats?

Ans. They are; many pilots are frequently absent.

Ques. After such abscence, when they return, is it necessary for them to serve as apprentices or strikers, in order to renew their license as pilots?

Ans. It is not. The law does not require it.

Ques. State whether you were absent from the upper river or not during the season of 1870.

Ans. I was.

Ques. When you returned to duty on the upper river, was you competent or incompetent to act as a pilot?

385 (Objected to as not competent and not material.)

Ans. My employers thought I was competent, or they would not have employed me. I considered myself competent.

Ques. In your judgment, as an expert, state whether abscence from that part of the river where Atlee's pier is built would affect a pilot's eye-sight, and render him more or less able to see that pier in the night-time without any light on it.

Ans. I don't think the abscence would affect his eye-sight.

Cross-examination:

About a third of a century ago boats passed on the east side of the island, in front of Atlee's mill. That was about the only way they could get to F't Madison, on account of the defective channel on the Iowa side. In later years the channel changed, so that we could run on the Iowa side. There was not much gravel-bar at French Creek until the country was pretty well filled up, and until the timbers and willows, &c., were cut off from the bank of the creek.

386 Atlee has had his saw-mill there some fifteen or sixteen years. His rafts and saw-logs have generally laid along in front of his mill; sometimes above and sometimes below. I did not pilot in front of F't Madison in 1870, but I did in 1871. I first saw the piers in 1870 when going up. I was on watch in day-light. I did not take notice of them enough to tell how much they stood above the water. I cannot say how far they could be seen up and down the river. I could not see them in day-time more than two miles; to see that there was an object there.

Ques. If a pilot had been away from the river a year, and did not know of a pile of rocks, or pier, at Atlee's mill, would he in a dark night be a safe person to pilot a boat with a barge in front of Atlee's mill?

Ans. If it was a natural obstruction, he would be a safe and competent pilot.

Ques. Suppose it was not a natural object but an artificial one, put in the water while a pilot was absent for a whole season, would

387 he be a safe pilot to navigate in front of Atlee's mill?

Ans. I would think he would, because, if it was an artificial one, would think it would be published so as to warn pilots from the obstruction, as is customary.

Ques. Is it customary to publish artificial obstructions when they are put in the river?

Ans. It is; I have seen it in papers freqently, especially bridge-builders, telling pilots how to run and where not to run.

There is one dangerous pier at Alma, near a saw-mill; there are several at Winona with lights on them; some at Clinton; some at Muscatine, away from where boats ever go, except to get off a raft; some at Burlington on a gravel-bar, away from the usual course of steamboats a good ways; one above Burlington that I came near getting on; one here, a quarter of a mile from where boats can go. Lights are not always kept on them. Lights are kept on the one at Winona most of the time; never saw a light on the Burlington piers.

388 Ques. Suppose you had been away for one year from the river, and during that time Atlee's pier had been erected on the western side of the channel as it is, would you have been competent to guide a boat in front of Atlee's mill without knowing of that pier?

Ans. I would have considered myself competent, because I had not seen that any one had got a charter to put such an obstruction in the river, or that there was any warning published for pilots to avoid it.

Ques. Suppose a snag had got into the water where that pier stands, during the time the pilot was absent a year, and he had not seen the snag, would he have been a competent person to pilot a boat past Atlee's mill in the spring of 1871?

Ans. He would have been competent. The changing of the position of a snag does not make a pilot incompetent.

Ques. Suppose the snag had not changed, but it had been a new snag; how then?

Ans. The snag would have been an obstruction, and he might
389 have sunk a boat or a barge, and he would still have been a competent pilot.

Ques. Does not the river often change its current and channel in one season?

Ans. Some portions of it changes in one season, but not often.

Ques. As a matter of fact, do you not remember when there was one gravel-bar at the mouth of French Creek?

Ans. I do; it took a good many seasons to form that bar.

Ques. Is it still forming and getting larger?

Ans. I think its tendency is to increase. The gravel-bar is uncovered nearly every season. In summer of 1869 I do not think it was uncovered at all. Portions of it are covered with water at all times.

Ques. Then, your opinion is that though a pilot has been acquainted with a particular part of the river for a whole year, he is a competent pilot over that part, notwithstanding what artificial or natural obstructions may have been created in it during his abscence. Is that so?

Ans. At that stage of water, when that barge was sunk, a good
390 pilot would be competent after an abscence of a year. At present I am pilot in the People's Line boats, and last year was pilot on the Lake Superior and Northern Line boat.

Ques. Did not these rafts of Atlee's that you have been speaking of often extend farther out into the river than the pier?

Ans. Sometimes; they did not always; I don't know how often.

Ques. Did you not see the rafts extending out farther than the pier before the pier was built?

Ans. I think it is probable that I have.

Ques. Have you ever run over the place where the pier now stands, since the gravel-bar ran out from French Creek, and since Atlee had his mill built? And, if you have, please state what boat you were on, and what year.

Ans. I have frequently run over it since, but I forget the year and the boats, except one boat, and that was the La Crosse. I think it was in 1858.

Ques. Have you run over that gravel-bar, and where the pier stands, since 1858? If so, state the year.

391 Ans. I have, but cannot state the year. I recollect an instance now, in the City of St. Paul, when a raftman, who was passenger, threw a letter out on shore at the mill. The letter was tied on a little stick. He stood on a wheel-house next the shore; I think it was 40 feet. It was high water. He requested me to run close so he could throw a letter ashore.

Ques. How far do boats generally run out in the river from that pier?

Ans. Descending boats aim to get out as far from it as they can, but they sometimes come very close to it when they have done surging

and flanking. When the wind is on shore you almost always get close to it. They usually run close to it; sometimes 5 and sometimes 50 feet from the pier. There is a difference in boats. The channel in front of the piers is from 200 to 250 feet wide, may be wider.

The boats that run on Upper Miss. are from 30 to 60 feet wide.

Ques. Why, where boats are from 30 to 60 feet wide, and the channel is 250 feet wide, do boats sometimes run within five feet of the pier?

392 Ans. A long boat running past there with a tow, and the tow sticking out ahead of her some distance, as they usually are, sometimes for a 100 feet ahead of her when she is coming down that way, and the wind blowing on the Iowa shore strong, she has to run at an angle of 45 degrees sometimes to keep off the piers. That would bring the bow of the barge close out to the bar.

That gives the reason of her being close to the pier. My custom has been to keep as close to the gravel-bar as I could, so as to be heading away from the piers when I got into the bite of the bend.

The channel in front of gravel-bar varies. I do not know how it is now; it changes very much; have not been there for some time. Every few years the outside bar may work in to the Iowa shore, or it may get inside. I have not been there for over two months, sometimes, this summer. In 1852 the channel in front of gravel-bar was not wide enough for a steamboat and a barge, unless barge was drawing

393 less water than what was in the channel of the river. In spring and summer of 1871 I think it was 200 feet wide in front of gravel-bar. After you pass the gravel-bar the channel keeps along the Iowa shore by the piers until you get to the point.

Ques. Does the channel draw in towards the Iowa shore from the gravel-bar, or keep straight down the river?

Ans. It draws in towards the Iowa shore until it gets past the piers. The piers stand in the channel. You can run when the piers are at any stage of water.

Ques. You say you can run inside where upper pier is at present stage of water, do you?

Ans. I could with any boat I could get over the rapids.

Ques. Could you run inside of the lower pier with any boat you could get over the rapids?

(Objected to as immaterial.)

Ans. I don't know. My impression is that the water is not so good inside of lower pier as it is in upper pier.

Ques. Where was Atlee's rafts lying when you run inside where upper pier stands?

394 Ans. Sometimes he had very light stock on hand.

Ques. When water is high, where do pilots run their boats with reference to the pier?

Ans. There is a great deal of difference with pilots as to where to run; some think it is best to keep deep water. Pilots of that opinion would keep near the piers; others would run out over the bar a quarter of a mile away, if they wanted to. Descending boats would always keep near the piers, because it is deepest and strongest water.

Ques. Did you think when you saw Atlee's rafts lying in front of his mill and extending out as far as the piers, before the piers were built, that they created an obstruction to navigation?

Ans. I did think they were some obstruction, as I think any stationery body in the river is an obstruction.

Ques. Is it not your opinion that every stationary body in the river,

whether a raft, or a pier for a boom to hold a raft, or a bridge, or
395 a highway-bridge, or a r. r. bridge, is an obstruction and a public nuisance, and ought to be abated?

Ans. I think they are all an obstruction, but am not prepared to say they are a nuisance and ought to be abated; but they ought to be made as little obstruction as possible.

Ques. If Atlee's rafts extend frequently farther out than the pier, how could a pier be put there to protect these rafts, different from what it is?

(Objected to as immaterial and irrelevant.)

Ans. He might have built a pier on the rocky point below the mill, and made a boom to reach from there above his mill to protect his logs, and clean from there to Burlington, rather than interefere with other people's rights. The rocky point is perhaps 400 yards below the mill.

Ques. Is there not a tendency to a boat's flanking towards the Illinois shore in that direction, across the river towards the Illinois shore, in passing the gravel-bar at French Creek, just above the upper pier?

Ans. I think not, as the current runs from the bar towards the
396 Iowa shore. The tendency of all the river from Appanoose, Illinois, is towards the Iowa shore.

Witness-fees, $3.00.

HENRY G. CARSON.

Subscribed and sworn before me this 22d day of August, 1872.

J. L. RICE, *Comm.*

397 JOHN GRIGGS, witness, of lawful age, for libellant, being by me first duly sworn, in answer to the following interrogatories, deposes and says (taken in narrative form by consent except when parties desire questions to be written out:)

My name is John Briggs; my age is 35 years; and live in La Crosse, Wisconsin. My occupation is that of steamboat captain at present. I have been steamboating since 1866. I am a licensed pilot, and have been since June 19, 1866.

I am somewhat familiar with the channel of the river along by F't Madison, and down by some mill-pier below. In season of 1871, I was running from La Crosse, Wis., to St. Louis, a portion of the time, and a portion of the time between the rapids, making regular trips between the rapids.

In running down stream from F't Madison, steamboats gene'ally round out from the landing and make what you may call a stand
398 out from the landing, and within a short distance below the landing they come back to the Iowa shore; then they follow the bend out, and after leaving the sand point or gravel point at French Creek they then streeighten down the river. They cross over to the Illinois shore just below the two piers.

The upper pier, I should say, is in a portion of the channel on the west side or Iowa side. The current of the river sets on the Iowa shore towards the pier. Steamboats on passing the pier, in case of high water or wind, are liable to sweep that shore or pier, as a tow-boat. I have been in habit of running tow-boats.

Ques. If you recall any particular trouble or difficulty that you may have had in passing that pier with barges in tow, state the same fully.

(OBJECTION.—Objected to as incompetent and not relevant, and does not relate to point in issue.)

Ans. On one or two occasions I was in great fear of striking the pier in passing it. I was towing barges at the time. I had the steamer
399 Annie Johnston and had two or three barges; will not be positive which. If I recollect right, the wind was blowing and she was flanking, so it was almost imposible to keep her off of it. I think that I was in much danger. The Annie Johnston is a tow-boat. At low water I know the depth of the water around upper pier, or know it very nearly, by having it sounded. I had it sounded last season; in September, I think. The water was about eight and ¾ inches, marked on the "indicator" at Montrose, at that time. When their is eight inches marked on the "indicator" at Montrose, there is about 30 (thirty) inches on the rapids in the channel. I found, by sounding on outside of pier, at that time about from six to eight feet of water. Now, at the indicator, it is 20¼ inches. I took the sounding at that time because I was going for a barge that was lying below the piers. Descending the river, I had three loaded barges in tow. I commenced making soundings at upper pier so that I could see whether I could get down there with the barges which I had in tow.

400 Just discovered that pier last season. It was the latter part of May or first of June.

I had been down the river, and was on my way up, when I first discovered it.

Ques. With reference to the navigation of the river at that point, what does that pier constitute?

Ans. I don't know exactly. I should say it constituted an obstruction in the river.

Ques. What effect, if any, does it have on the perils and dangers of navigation?

Ans. Danger of boats running into it, or anything else running in the river. In April, 1871, it was, I judge, what I would call high water; not the very highest either.

Ques. At a high stage of water, in the night-time, without moon, how far do you think the pilot of a descending boat could see that upper pier without any light on it?

Ans. Not over a hundred yards, if as far as that.

I knew the barge Jack Reaney before she was sunk. She was
401 what we call a bulk-barge, for carrying bulk-grain. A bulk-grain barge is a barge sheathed inside to carry grain, and has a roof, and also hog-chairs.

Such a barge as she was, at that time, was worth $3,000 to $3,500, to the best of my judgment. That kind of barge, under charter, was worth about ten (10) dollars per day at that time. I think freights were plenty in May and June on the upper end of the river, from Davenport up. I was not in this part of the river at that time. The Jack Reaney was used any where on the river from St. Louis to St. Paul. I saw the Jack Reaney after she was wrecked. I saw her the latter part of May or first of June, on my return trip from St. Louis, lying below these piers below F't Madison, one end on shore and one end in the water; most of her was in the water, with water over decks. A portion at the end was on shore; small portion. I ran close in on purpose to see her. The next time I saw her, I had business at F't Madison, to see Capt. Kinnear, and had occasion to go down to the barge to get a skiff to come down to
402 Montrose. I went up to F't Madison on the train. I think it was in September that I saw her this time, but am not certain. The barge was sitting on jack-screws and timbers, and they were repairing her; could not say how much of her was broken in; am not a ship-carpenter.

I took barge away from F't Madison after she was repaired and towed her with the Annie Johnston.

Ques. State, if you know, what was the difference of the Jack Reaney repaired and Jack Reaney before the accident.

Ans. When I took her away from there she had no roof or cargo-box on her, and no inside lining, and no hog-chain; the hog-chain was taken away from her, all but the two ends, where it makes fast to the end of the barge.

I towed her occasionally along last season, after she was repaired. She had no hog-chain on her then; there was none on her the last time I saw her, which was about the last of navigation season.

Cross-examination:

403 I towed the Jack Reaney last season with the steamer Annie Johnston. I judge the Northwestern Union Packet Company owned her at that time. That co. is the libellant in this suit.

Quest. What was the Northwestern Union Packet Co. doing with the Jack Reaney last season after she was repaired?

Ans. Using her for carrying freight.

Ques. What was she worth, under charter, last season for carrying freight per day, after she was repaired?

Ans. I should judge she was worth $10 per day after she was repaired. Could not say how late in the fall they used her. I have not seen her this spring.

Ques. Would not the effect of running a barge on shore and letting her lie on the shore, part in dry land and part under water, and waves rolling frequently against her, have the tendency to injure her in the middle more or less?

Ans. If she sunk the waves would not hurt her.

Ques. Suppose half of her was under water and the other half rests on shore and is dry, and the dry part is higher than the sunk part,

404 would not her lying there a considerable time have the tendency to injure her in the middle?

Ans. Not without there was something under her in the middle.

Ques. You spoke of Cap. Kinnear; is he the boat-builder and repairer for the libellant?

Ans. I don't know as he is.

Ques. Was he not almost constantly in the employ of the libellant about a year ago?

Ans. He was, I think, not knowing positively.

Ques. Where did he have his boat-yard at?

Ans. I did not know as he had any.

Ques. What was he doing a year ago?

Ans. Acting as superintendant of the Northwestern Union Packet Co.

Ques. Where was his main place of business at that time?

Ans. Cannot tell you. He is a gentleman that acts at different points on the river; sometimes here, sometimes F't Madison, and at different points. He made his headquarters here most of the time last summer.

Ques. How long has Capt. Kinnear been acting as superintendant of the libellant?

Ans. I have known him as assistant superintendent of libellant three years; at least, he was called such.

405 Ques. Who ordered you to go and get the Jack Reaney?

Ans. Capt. Kinnear ordered me to go and get her with the Annie Johnston.

Ques. Was she not used that fall in service of libellant?

Ans. I suppose she was. I towed her myself with the Annie Johnston.

JOHN GRIGGS.

Witness fee, $1,50, paid by p'lt'ff.

Subscribed and sworn to before me this 23d day of August, 1872.

J. L. RICE, *Comm'r.*

406 HARRISON WEST, witness of lawful age, for libellant, in answer to the following interrogatories, deposes and says:

My name is Harrison West; age about 44 years, and live in Montrose, Iowa. My occupation is working around the rapids; am a pilot, but not licensed pilot.

I know the barge Jack Reaney; saw her just after the accident, the next morning after she was sunk. She was lying at that time between the Park House and the shingle-mill, near Atlee's mill. She wa' lying at that time pretty nearly straight up and down the river, sunk. The water was running over her deck. She had a line ashore. The stage of water at that time was about a medium stage, I should call it. I judge from the amount of water there was on the rapids there. I was aboard of her that day. I went up there to look after the freight that was lost. I could not tell much about her injuries then, except that I saw that the plank-sheer and the deck was broken in. The plank-sheer is one

407 oak strip that runs around on *on* the top of the barge on the outer edge. I think it was about a foot wide on the Jack Reaney. I did nothing to the barge then. I got off of the skiff on to her, and went over her as near as I could. The water was three to five inches deep on the top of the boat. This was in the middle of the boat. Her ends were both out of water. I was aboard of her once or twice after that, before the river got down.

The company (Northwestern Union Packet Company) wanted me to raise her. Capt. Tho. L. Davidson, of the steamer Northwestern, was the party who spoke to me.

Ques. What instructions did he give you, and when was it?

(OBJECTION.—Objected to as bearing and irrelevant.)

Ans. This was about the first of June, 1871. He instructed me to go up and make a thorough examination. By this time the water had got down. He instructed me to report to him when he came down. He wanted me to make him a written statement of what I would bulk-head her for, and raise her, and get her ready to float.

Ques. Did this include repairs?

408 Ans. No.

Ques. State when you went and examined her.

Ans. I made that examination on the 4th day of June. The water at that time was about 3 to 4 feet deep where the break was. I stopped off and went inside of her, and made a thorough examination. I found the bottom badly broken up, and the side was all broken in.

Ques. Describe, as well as you can, the dimensions of the break in her.

Ans. The side was cut entirely in two; also, lower knuckle. About 23 or 24 floor-timbers were broken. The deck and cargo-box were badly damaged. The hog-chain was broken. That describes the dimensions of the break as well as I can. I did not do anything towards raising her then.

Ques. State when you went to her again, and for what purpose.

Ans. I don't recollect that I went to her again until I commenced work on her. I commenced blocking her up the 21st of July. Capt. Kinnear hired me to block her up and clear her out, and take everything off of her. I was working by the day.

409 I superintended blocking her up and the repairs until a certain date. When I commenced blocking her up one end of her way on dry land and the other end was in between 28 and 30 inches of water at her stern. We raised her up with jack-screws high enough for men to work around under her bottom, and blocked her up with blocks that we got there at the shingle-mill. After we blocked her up we took off her cargo-box, cleared out the mud, and took the dunnage out, when we commenced cutting out for the new work and proceeded to repair her.

Q. What repairs were put on her, briefly?

Ans. In the first place we had to send to La Crosse for lumber. We could not get the long lumber that we wanted in F't Madison. As soon as that lumber came we commenced the repairs. It was three or four days before it came. We prosecuted the repairs as fast as possible under the disadvantages we were laboring under. It was an ugly place for men to work in; mud and water a part of the time. Some of the days when it rained it made it very bad.

410 We put in thirty-two (32) feet of new knuckle, and the whole side for thirty-two feet had to be all new. There had also to be a new deck put in her, on that side, from 30 to 35 feet. I had charge of her only 18 days until she was launched and taken to Montrose.

Capt. Kinnear paid me for my services. He paid some of the bills, and refunded me some bills that I had paid.

The cargo-box and inside lying were not replaced. We changed her from a bulk-barge to a common freight-barge. No hog-chain was put on her while I had charge of her. I don't know exactly what the repairs cost. The expense of repairs up to time I quit was about $365. That did not include some lumber-bills, and it did not include the lumber-bill from La Crosse.

Ques. About how much would it have cost to have replaced the cargo-box, inside floor and covering, and hog-chain?

Ans. I don't know exactly; but about a thousand dollars.

411 Ques. Suppose the cargo-box, inside-lining, and hog-chains had been replaced, and the barge put as nearly as possible in the same condition as she was prior to the accident; to the best of your judgment, what would have been the difference in value between the barge thus patched up and repaired and the barge before she was wrecked?

Ans. I would say $500.

Ques. To the best of your judgment, in repairing that barge after collision with the pier, was it at all possible, by any amount of repairs, to make her as good and staunch and valuable a barge as she was before the collision?

Ans. I suppose she could have been made nearly as good as before, but it would have required a great deal more money than was expended on her before she was wrecked. The customary price of barges is $10 per day.

Cross-examination:

412 Ques. How much do you say it would have cost to have repaired the Jack Reaney from the start, and make her with her cargo-box, dunnage, and hog-chain as good, or nearly as good, as she was before the accident, cash in hand?

Ans. I say eighteen hundred and fifty (1,850) dollars, at a rough calculation.

Ques. You were on the barge the next day after the accident; was that so?

Ans. Yes, sir.

Ques. What time of the day?

Ans. I think about one o'clock p. m. She was injured the night before.

Ques. What cargo was on her?

Ans. There was not any freight on her when I saw her. I got twenty (20) pigs of lead of' her afterwards. I got these pigs of lead out of the hold on the 4th day of June.

There was no cargo that I could see on her when I went to her on day after injury.

Ques. Did you see any cargo on or in that barge besides the 20 pigs of lead you got out of her afterwards?

Ans. No.

Ques. What time of the morning after the accident did the Phil She'idan arrive at Montrose?

413 Ans. I think between six and seven o'clock in the morning.

Ques. How far is it from the bottom of the keel to the top of the barge that was under water?

Ans. A pretty deep-hold barge. I don't recollect how deep. She was about a five-feet hold barge.

Ques. How deep then was the water in which she say—the middle of the barge—that day?

Ans. I did not measure it. I should judge six feet on the inside and from seven to eight feet on the outside.

Ques. How deep was the water on the rapids at that time of accident?

Ans. I believe there was about three feet and a half large in the rapids—3¼ to 4 feet.

Ques. Could the Sheridan cross the rapids without lightage?

Ans. I don't know. I don't think she could have crossed without lighting.

Ques. If there was 3½ feet on the rapids at the time, how much was that above low water?

Ans. That would be four feet above what we call low water—the low of 1864.

Ques. How many feet of water was on the rapids in 1864 on the channel?

414 Ans. There was not quite a foot, I guess.

Ques. Then if there was not quite a foot in the rapids in 1864, and there was only 3½ to 4 feet on it at the time of the accident to the Jack Reaney, how do you make out that the water on the rapids was four feet higher at the time of the accident to the Reaney than it was in 1864?

Ans. When the water is at a very low stage on the rapids, boats can go over it deeper in proportion than when it is three or four feet.

Ques. Do you still say the water was from 3½ to 4 feet on the rapids, where the barge sunk?

Ans. Yes, sir. I was a rapid-pilot, living at Montrose at the time, to pilot rafts and barges over the rapids.

Quet. What was the raise of water above low water at F't Madison at that time of the accident?

Ans. I could not guess within a foot of it; sometimes a foot at F't Madison won't show more than half that at Montrose.

Ques. Do you believe there was as much as a raise of five (5) feet above low water at F't Madison when the accident happened?

415 Ans. I think there was four to five feet, to the best of my knowledge.

Ques. Could not the barge Jack Reaney have been raised on the morning that you visited her, and carried to the ways at Montrose, and been repaired, by using the necessary appliances?

Ans. Yes, she could. It would have required two barges and a good deal of rigging to do it. There are ways at Montrose, but we can't use them at high water to do any good. It was not too high then to put the barge on the ways, but it was afterwards—say three or four weeks afterwards.

Ques. Was not three or four weeks after she would have been on the ways ample time to have repaired her, if there was sufficient force put on her?

Ans. Yes. In S't Louis she could have been repaired in a week.

Ques. Could she not have been repaired as soon in Montrose as in S't Louis if there was a sufficient number of hands put on her?

Ans. Yes, of course.

416 Ques. How much would it have cost to have floated her down from where she lay to the ways at Montrose?

Ans. I don't think she could have been floated to Montrose at all.

Ques. You are so very special and technical that I will ask you what I asked you once before: Could not the barge Jack Reaney have been raised on the morning that you visited her, and carried to the ways at Montrose, and been repaired, by using the necessary appliances?

Ans. I answered that once, I believe; I will answer it again. She could by use of two other barges and a sufficient amount of rigging to raise her up. It could have been easier, I think, after the water got higher, too.

Ques. Then what would it have cost to have floated the Reaney between two other barges to the ways at Montrose?

Ans. That is the hardest question you have asked yet. I would not have taken the contract less than $200, and have furnished the barges, rigging, and everything else.

Ques. How much did they offer you to raise and repair the barge?

417 Ans. There were so many offers made it is pretty hard to answer. I believe the only offer I ever had made was once when Capt. Pete Davidson was down here, in June, before the water got down so I could see what the amount of damage was, was $650.

Ques. Who is Capt. Pete Davidson?

Ans. Superintendent of the Northwestern Union Packet Company. I did not think it could be done for that.

Ques. What did you offer Capt. Davidson to do it for?

(Objected to as immaterial.)

Ques. Who paid you for the work you did?

Ans. Capt. W. W. Kinnear.

Ques. Did he not pay you at Montrose?

Ans. He paid me money at different places—at F't Madison, Montrose, and Keokuk.

Ques. Was he not a resident superintendent of libellant at the time?

Ans. I understood he was. I don't think I signed any receipts until we settled in Keokuk. I remember giving him a report in full. I got lumber of Atlee for the repairs of that barge. While we were working on it I told them to charge the lumber to the Northwestern Union

418 Packet Company.

Q'est. Why did you tell Atlee to charge that lumber to theNorthwestern Union Packet Company?

Ans. Because I supposed the barge belonged to them, I reckon.

Ques. Why did you suppose it belonged to them?

Ans. The brand of the Northwestern Union Packet Co. was on it.

Que. Did not the Northwestern Union Packet Co. furnish the long lumber that came to the barge from La Crosse? Was that not your understanding?

Ans. I had no right to form any understanding who was to furnish the lumber. It was brought to F't Madison by the steamer Dexter, one of the company's boats, in the might.

Ques. Never mind your right to understand, but tell me if you did not understand, without reference to your right to understand, that the company furnished the long lumber.

Ans. I believe Capt. Kinnear told me that he sent to the yard or mill of the company at La Crosse for the lumber.

Ques. You stated, on direct examination, that you had an idea
419 of the cost of the repairs put on the barge after you quit working on it. Give that idea.

Ans. I think it was about $300 to $400 after I quit. I don't know about it.

Ques. Has not the Northwestern Union Packet line been running and using that barge in connection with steamboats since she was repaired?

Ans. I believe they have.

Ques. Is not Capt. Kinnear still one of the superintendants of that line?

Ans. I believe he is.

Ques. Are you still in the employ of the Northwestern Union Packet line?

Ans. No, sir.

Q. Have you ever been in their employ since you went to look after the barge Jack Reaney?

Ans. Yes, sir; I raised several barges before this, and did other work for them.

Ques. With all the light that you have got with reference to the raising and repairs of the Jack Reaney, what would you consider it worth to have raised her and repaired her as soon after the accident as it could have been done; I mean her repairs with cargo-box, dunnage, and hog-chain?

Ans. I will tell you how I estimate it. I put down a thousand
420 dollars for cargo-box and dunnage, eight hundred and fifty dollary for repairing the barge and hog-chain. That includes everything.

Redirect examination:

Ques. In going up from Montrose in the skiff, the day after the accident, state what freights, if any, you found strewn along the shore.

Ans. I found before I got to F't Madison two barrels of tallow, and four more barrels below F't Madison, a piece, making six barrels in all. I got about 44 or 45 sacks of oats. That is all I recollect of.

Ques. Don't such boats as the Sheridan light over the rapids in an ordinary stage of water, or such water as prevailed in April, 1871?

Ans. They do, when they have much freight. There were no barges at F't Madison at the time of the accident to raise her with and tow the Jack Reaney to Montrose. The river was rising very fast at the time of the accident. There were no barges at Montrose to raise the Jack

Reaney with and tow her to Montrose. The water continued rising for some time after the accident.

421 Ques. State whether you employed what ship-carpenter and hands you could obtain at Montrose to repair the barges.

Ans. I did. I could not get any from the yard. Mr. Anderson could not let me have any. I got W'm Wright at Montrose.

Ques. Did any one instruct you to have that lumber charged to the company?

Ans. They did not; not in particular.

Ques. Did you have any instructions in any way to whom it should be charged?

Ans. I did not.

Ques. Do you, of your own knowledge, know to what company the steamer Dexter belongs?

Ans. I do not. One of her shingles has the "People's Line" on it.

Ques. You have given your idea of the costs of the repairs put on the barge after she went to Montrose. Did you make any of the disbursements for her repairs there, or do you know of your own knowledge what they cost?

Ans. I only judge from the amount of men that worked on her, and the amount of the materials used, and the time they were working.

422 Ques. Was your time paid for, and the disbursements you made returned to Capt. Kinnear?

Ans. Yes, sir; every dollar. The other things that were got by me Capt. Kinnear paid on my approval.

Recross-examination:

Ques. You said awhile ago that you understood you were making the repairs for the North Western Union Packet Company. Why did you say that?

Ans. Because the barge belonged to them. I knew nothing to the contrary.

Ques. Did not the superintendent of the said packet company, W. W. Kinnear, superintend*ent* the repairs made on the boat at Montrose?

Ans. No, sir; he did not. He knew Mr. Joe Woolverton, of Muscatine. Kinnear was sick at the time.

Ques. Was there any other superintend*ant* at Montrose of the said company, besides Kinnear?

Ans. Not that I know of.

HARRISON WEST.

Subscribed and sworn to before me this 23d day of August, 1872.

J. L. RICE, *Com.*

Witness fee, $3.00; mileage, 1.20—4.20. Paid by pl'ff.

423 W. W. KINNEAR, witness, of lawful age, for libellant, being by me first duly sworn, deposes and says in answer to the following interrogatories:

Taken in narrative form by consent.

My name is W. W. Kinnear; age about 36 years, and live in Keokuk, Iowa. My occupation is superintend*ant* of the Peoples' Line of tow-boats and agent of the North Western Union Packet Company.

Ques. State what your general business has been for several years past.

Ans. Agent of the North Western Union Packet Company, and acting as assistant superintendant of the North Western Union Packet Company, and directing the movement of boats and barges.

Ques. Where was your post of duty in 1871?

Ans. At La Crosse, Wisconsin.

Ques. What were you doing then?

Ans. I was acting as assistant superintendent of the said company.

Ques. State, if you know, who had charge of all the barges of that line that spring.

424 Ans. I did. The line had about forty-nine barges, I think. I knew the barge Jack Reaney. She belonged in spring of 1871 to the North Western Union Packet Co. She was one of the barges under my charge. She was a model bulk barge, specially fitted up to carrying bulk grain. Her general condition was good. I think she was delivered to the Phil Sheridan from the first to the middle of April, 1871. I delivered her to the Sheridan. When I delivered her to the Sheridan I considered her worth about $3,500. We have an idea of the value of such barges. I had charge of the barges of that company about eight years before the accident, and still have charge of them.

The next time I saw the Jack Reaney was at F't Madison, on the bank below Atlee's Mill. She was in a sunken condition. I was not aboar' of her. I saw her when coming down the river on the S. S. Merrill. I never had any orders from the North Western Union Packet Co., and never gave any, to have her raised.

425 The North Western Union Packet Co. sold the wreck of the Jack Reaney to me.

Ques. State what officer of the company sold the wreck to you; when, and for how much?

Ans. W'm F. Davidson, president of the company, sold her to me about July 25, 1871, for $150, at S't Louis.

Ques. State what arrangement was made at the time of the purchase, and all the facts connected with it.

Ans. I bought the barge for $150; I told him that I had not the money to go on and raise and repair the barge; he said he would advance me the money and would charter the barge from me and take his pay out in barge-hire. I came to F't Madison and looked at the barge to see what arrangements I could make to raise the barge. I hired Hanson West, by the day, to take charge of raising her. He did so, and hired laborers and men, just as he needed them, to raise her; after he got her raised so that the carpenters could work on her, I then

426 hired a man by the name of Woolverton, from Muscatine, to take charge of the carpenter-work and caulking, and the men that was to work on the barge. I think West commenced about the first of August, from that to the 10th; after I bought her, when I first went to her, from the first to the fifth of August, one end of the barge was up on the bank and the other end down in the water, in about 3½ to 4 feet of water.

Ques. State why she was not repaired sooner.

Ans. I do not know why.

Ques. As she lay with three and a half or four feet of water around part of her, and while high water prevailed, could she have been raised without great expense and extra appliances?

Ans. She could not. I have worked as a ship-carpenter for several years in repairing boats and barges on this river.

I examined the break in her side and the injuries to the Jack Reaney.

She was cut into her side clear to her kelson, a break about 25
427 or 30 feet long; her deck side and bottom was broken in about that distance. Her cargo-box, hog-chain, and hog-chain braces were torn off. They were broken and destroyed. Her dunnage or inside lining was damaged more or less and torn up so that I tore it all out of her when I began to repair her. Her seams were strained and opened, and in a bad condition, and had all to be recaulked.

Ques. In your judgment, as a ship-carpenter, state whether or not would it have been possible, wrecked and broken as the Jack Reaney was, to have bulk-headed and raised her without extraordinary expense and appliances until the water receded to a low stage, and give your reasons.

(Objected to, as it has not been shown that witness is competent to give a proper opinion on that subject.)

Ans. I think it was impossible she was broken so badly in her amidship. She was so weakened, I think, by putting in a bulk-
428 head and raising her off of the ground, that she would have broken in two.

I don't remember exactly, but think she was taken to Montrose about the first of September. Her repairs were completed there; I caused the materials to be furnished at Montrose; I got my lumber at La Crosse, for her side and bottom, from the Northwestern Union Packet Co.'s sawmill. It was brought from La Crosse to F't Madison by the steamer Dexter. I think the Dexter belonged to the People's Line. The other lumber, I got some from Mr. Atlee at F't Madison, and some from a sawmill at Montrose.

Ques. State whether you kept an itemized account of all these expenses.

Ans. I did.

Ques. Look at the paper-writing which I now hand you, and to be marked Exhibit A, of this deposition, and state what it is.

Ans. It is a correct account of the money expended on the barge Jack Reaney for raising and repairing her, except the lumber-
429 bill from La Crosse, and a bill that Mr. Atlee claims, which last is not paid; the lumber bill was $139, which was paid.

Ques. Who paid the money referred to in the items of that account?

Ans. I did; it amounted to $797.61 and $6.25, making $803.86.

Ques. How much does it all make that you paid, adding in the $139 paid by you for the lumber from La Crosse?

Ans. Nine hundred and forty-two and $\frac{86}{100}$ (942.86) dollars.

Ques. Where did you get the money to pay these bolts?

Ans. I drew it from the Northwestern Union Packet Co.

Ques. Under what arrangement or contract did you draw that money?

Ans. On my own account; it was charged to me, and was to be paid back by the hire of the barge.

Ques. State exactly what arrang'ment you made with the Co. for the payment of the money by the hire of the barge.

Ans. They were to advance me the money to repair the barge
430 with, and was to charter the barge from me, and the charter-money was to go on my account. I was to have $5 per day from the time the repairs were made that season to the close of navigation and from the opening of navigation the next season to its close, until the money was all paid. This includes all days during that period.

Ques. Did the Northwestern Union Packet Co. charter her to other parties during a portion of that season; if so, to what Co., and for how much per day?

Ans. They chartered her to Capt. Mose Hall, who used to run the Molly M. Prike and S't Johnson. I do not know for how much per day. I think it was $8 per day.

Ques. How much did the charter-money amount to for the balance of that season of 1871 to you?

Ans. Over four hundred (400) dollars.

Ques. Did you settle up with the Packet Co. after the close of navigation? If so, how?

Ans. They gave me credit for the number of days they had the barge at $5 per day, and for the balance I gave my individual note to
431 the company. That note was to be paid by the use of the barge until the note is paid.

Ques. Before the accident to the Reaney, when she was in good condition for use as bulk-grain barge, how much was she worth per day under charter?

Ans. From $10 to $15 per day.

Ques. State in what particulars she differed after her repairs were completed from what she was before the accident.

Ans. After she was repaired she did not have any cargo-box on her, her hog-chains and hog-chain braces and dunnage or inside lining in her?

Ques. About how much would it have cost to have replaced these articles and have put her in as good condition as it was possible to do for a bulk-grain barge?

Ans. I think it would have cost between $600 and $700 to have put on her cargo-box, hog-chain braces, dunnage, and lining.

432 Ques. If she had been thoroughly repaired, and with all these articles you have mentioned replaced, about what, if any, would have been the difference in her value from what it was before the accident?

Ans. There would have been a difference in value. I don't know about how much, but I should judge her hull would have been damaged about $500.

Ques. Is there a difference in value, for charter purposes, between open-hold barges without hog-chain and dunnage, and cargo-box barges, and bulk-grain barges?

Ans. There is; the difference is in favor of cargo-box barges, for merchandise and bulk grain; the difference is 50 per cent.

The barge is licensed and enrolled at the port of S't Paul in my name. I am still the owner of that barge, and she is still under charter from me to the Northwestern Union Packet Co.

433 Ques. What did you consider her reasonable value after her repairs were completed?

Ans. From $1,800 to 2,000.

Ques. Can you state the amount of the unpaid bill of Atlee's for lumber for the barge?

Ans. I cannot.

Ques. How much did he tell you it was?

Ans. He did not know; he thought it was about twenty odd dollars.

Ques. If that bill is presented to you and you are satisfied it is correct, and that the lumber was furnished, state whether you will settle or not?

Ans. I told Mr. Atlee, yesterday, that if Mr. Woolverton or Harrison West would approve of the bill I would pay it on presentation; or to that effect.

Ques. Did you instruct Woolverton and West to get lumber of Atlee to repair the barge?

Ans. I did.

Ques. Did you tell them who to have the lumber charged to?

Ans. I did not.

Ques. Who ordered the lumber from the La Crosse yard?

Ans. I did, myself.

434 The repairs on the barge were completed and she was ready for service about September 12, 1871.

Ques. State whether the repairs were or were not prosecuted as expeditively as possible under the circumstances, and why it occupied so much time to complete the repairs?

Ans. They were; one reason why it took so long was that we could not get hard-wood lumber; there was not any I could get from the mills in Keokuk or F't Madison, to do the repairs. I had to order the lumber from La Crosse. It took nearly two weeks to get it from there, from the time I ordered it, to get to work. We commenced work on the barge between the first and 10th of August, and they were completed about the 12th of September. The repairs occupied a little better than a month.

Ques. Have you had experience in chartering barges to other parties?

Ans. I have chartered barges to other parties.

435 Ques. How much per day, charter-money, have you received for bulk-grain barges similar to the Jack Reaney?

Ans. I have charged $25 per day.

Cross-examination:

Before the Jack Reaney was injured, I think from $8 to $10 per day would be a fair price for her use, for the whole year around of navigation. I have been the agent and superintendent of libellant, looking after the interests in this county, for a little better than a year, and have resided here during that time. I was their agent and acting superintendent while I was having the barge repaired. The hard lumber for repairs was got from the mills of libellant. I paid Atlee's bill of lumber that was got for repairs, made out against the Northwestern Union Packet Co.

I think I told Harrison West, when he was working on the barge, that I owned it, but I am not positive.

436 Ques. You stated in your direct examination that the whole expenses, as far as paid, in the repairs of the Jack Reaney was $942.86; was that so?

Ans. Yes.

Ques. You stated in your direct examination that if the hog-chain and cargo-box, inside lining, or dumage, had been also put on the Jack Reaney, so as make her as near as possible before the injury, that still, with all such repairs, she would have been worth $500 less than she was before the injury. Do you still hold that opinion?

Ans. To the best of my judgment, the hull would be worth $500 less.

Ques. Would the upper works above the hull be any the worse after being repaired as well as they could be?

Ans. I don't understand what you mean by the upper works. I don't think they would be any the worse.

Ques. You stated, yesterday, that in your opinion it would have cost between $600 and $700 to have put on the hog-chain, to put in

439 the cargo-box and dumage; is that your opinion still?

Ans. It is.

Redirect-examination:

Ques. Before you paid that bill to Atlee, were you aware that it was made out against the Northwestern Union Packet Company?

Ans. I don't know whether I was or not. I paid the bill because I thought it was a just bill, and I know the lumber was received.

W. W. KINNEAR.

Witness fees, $3.00. Paid by pl'ff.

Subscribed and sworn to before me this 24th day of August, 1872.

J. L. RICE, *Com'r.*

437

EXHIBIT A.

Account against barge Jack Reaney.

Aug.	9.	Use of Anderson's jack-screws	9 25
		Freight on same	3 00
		Drayage on same	1 60
		Hauling blocks and timber	1 50
		Use of old man's crew	1 00
		John McCulugan, 5½ days, @ 2.50	13 12
		" " 1½ " @ 2.00	3 00
		M. McCulugan, 5¾ days, @ 2.50	14 36
		Saul Murdley, 5½ days, @ 2.50	13 12
		H. Adams, 5½ do., @ 2.50	13 12
		H. Pittman, 6¾ do., @ 2.50	16 86
		A. M. Bagley, 6¾ do., @ 2.50	16 86
		J. W. Crully, 3½ do., @ 2.50	8 12
		W'm Gillman, carpenter, 2½ day', @ 3.25	8 12
		Railroad fare from Montrose to F't Mad	2 00
	28.	W. W. Wright, carpenter, 11½ days, @ 3.25	38 18
		E'd Gilwright, do., 11½ do., @ 3.25	38 18
		B. F. Anderson, do., 14¾ do., @ 3.25	47 90
		A. M. Bagley. 5 day', @ 1.75	8 87
		F. Hillham, blacksmith bill	20 70
		Olner Anderson, 4¼ day', @ 1.50	6 37
		E'd Pittman, 5¼ do., @ 1.75	9 18
		Paid for hauling timber for ways	3 00
Sep.	2.	W. H. Wright, carpenter, 5½, @ 3.25	17 87
		E'd Pitman, " 14¾, @ 1.75	25 81
		E'd Gillbright, " 5½, @ 3.25	17 87
		B. F. Anderson, " 5½, @ 3.25	17 90
		A. M. Bagley, " 2¾, @ 1.75	4 81
		M. Case's bill L. & tallow	1 48
		E. & S. McFaeling's bill	3 75
		Amount carried for'd	386 90
438		Amount bro't forward	386 90
Sept.	13.	A. M. Bagely, 2¼ days, @ 1.75	4 25
		W. H. Wright, 10 " @ 3.25	32 50
		Railroad fare from Burlington	1 30
		J. A. Waleston, 24 day', @ 3.50	84 00
		Drayage	50
		Seam-brush	40
		Nails	10
		Fer'age, at Burlington, on chest & 4 men, toll	50
		J. Heman's blacksmith bill	3 10
		Baners & Sims' bill	20 35
		Heeson's & Hale's bill	9 80
		Wills, Felh & S. bill, at Montrose, for lumber	7 30
	10.	W. G. Woolverton, 6 days, @ 3.25	19 50
		Tho's Ellis' bill, at Montrose	1 65
		H. West, 8 days, @ 5.00	40 00
		do., 1 " " 5.00	5 00
		do., 16 " @ 3.50	56 00

Ha'lling oak-log to mill, & lumber back	2 00
3 loads block-ha'lling	1 00
Cir. Express charges on nails & pitch-ket'le	1 50
Maps to pitch with	75
Railroad fair' from Burlington to Keokuk	1 85
E'd Gillbright, 10 days, @ 3.25	32 50
Railroad fair' from Burlington to Montrose	1 30
A. C. Catler mill's bill	58 00
Sam. Atlee's bill	19 48
Bill at Montrose drug-store	3 60
Capt. Pattons, 37 feet oak, @ 4 c	1 48
Spikes	1 00
	797 61
2 day', [piece torn out; unable to copy the writing thereon,] $3.(12) p'r day	6 25
	803 86

440 H. M. PATTEN, witness of lawful age, being by me first duly sworn, deposes and says, in answer to the following interrogatories:

(Taken down in narrative form by consent, except when the parties desire to have the question written out.)

My name is H. M. Patton; age, about 55 years, and live in Montrose, Iowa. My occupation is that of a steamboatman, since 1846. I am a licensed pilot from Keokuk to Rock Island; have been steamboatman, from deck-hand up. I have considerable experience in repairing barges, lighters, and steamboats. I know something about value of barges under charter on this river. I have seen barge Jack Reany, and have towed her over the rapids frequently for the Northwestern Union Packet Company.

Ques. What would the values of such a barge as the Jack Reany, before she was wrecked, be worth per day under charter?

441 Ans. That would depend upon the amount of bulk-grain that was to be handled.

Ques. What would have been a fair average price per day for her, in the early part of 1871?

Ans. From $10 to $15 per day. It would depend a good deal whether you wanted to use her for sacks or bulk-grain.

Ques. When she was repaired, after the accident, what, to the best of your judgment, would it have cost to replace her cargo-box, dunnage, hog-chains, and hog-chain braces?

Ans. I contend she had no cargo-box on her. She had a roof on her. She was a roof-barge.

Ques. How much would it have cost to have put her back in the same shap' she was before the accident, in addition to the repairs that were put on her?

Ans. I don't know whether her hog-chain was lost. Her roof could have been put back on her, and her dunnage or sealing for $400.

442 If the hog-chain was there, all that had be done to it was to put in footling and braces, and if that would be the case this would be included in the $400.

Ques. How were freights on the river in the latter part of April, and in May, June, July, and August, 1871?

Ans. Freights were good in April, May, and June; July and August they were scarce.

I am in the habit of seeing rafts, lighters, and barges, and floating-craft moored on the river at night. The usual custom is keep lights

on all piers, rafts, lighters, flat-boats, and everything tied to the bank, a' night.

I have seen Atlee's upper pier, below F't Madison. I don't think I ever saw it before the accident. Since the accident, I have always seen a light on the pier.

Cross-examination:

Ques. Captain, I understand you to say you have towed the Jack Reaney over the rapids frequently before she was injured? Is that so?

443 Ans. Yes, sir, I have.

Ques. Have you seen her frequently since she was injured?

Ans. I saw her lying sunk at F't Madison, and lying fast to the shore. I saw her at Montrose after they brought her down there to finish up the repairs. I have seen her since, but have never towed her.

Ques. Have you superintended the repairs of barges that have been injured from the one cause and another?

Ans. I have, quite a number, and have raised a good many sunken barges and repaired them.

Ques. Have you ever run as carpenter on a steamboat?

Ans. I have.

Ques. Have you ever worked on the repairs of steamboats or barges when put in the ways for repairs?

Ans. I have superintended the repairs of steamboats, barges, and lighters on the ways.

Ques. How long have you lived at Montrose, on the rapids?

Ans. Since May, 1849. I lived in Keokuk four or five years before that.

444 Ques. Have you not ever since you came to Keokuk, 28 years ago, been engaged most of your time at the river, either as captain or in repairing barges and boats and sometimes piloting?

Ans. With the exceptions of four seasons, I have been a steamboatman, from a deck-hand up, since then.

Ques. Owing to the fact of the rapids on the Miss. River commencing at or near Montrose, have not barges and lighters been largely gathered about that point, and more than any other point on the Upper Miss. River that you know of during your long experience in steamboat matters?

Ans. Lighters have, for the reason that they are used at no other places except the rapids. Barges have been used all up and down the Miss. River from S't Louis up. Boats use the barges for the rapids more especially, frequently leave a barge at F't Madison or Burlington, on their trip have it ready when they come down to light up

445 across the rapids, and even unload them below the rapids, and leave them at different points, and have them to lighten up when they come up to cross the rapids when bound up stream.

Ques. What would it have cost to raise the Jack Reany and take her to Montrose to put her on the ways there immediately after she was sunk? You say you have raised many barges, and I judge you would be a good judge of this matter.

(Objection.—Objected to, as pl'ff has not asked witness any question in regard to the matter enquired about in this question.)

Ans. I cannot tell, not having seen her; did not see the break in her.

Ques. Captain, will you say whether, in your opinion, that boat could have made as good as she was before she was injured, by putting in good materials and good workmanship?

Ans. I say she could not, nor no other barge could be made as good after she had been stove up and broken.

446 Ques. Please give a full explanation of the difference between that barge before injury and one that has what is called a cargo-box.

Ans. What we call a cargo-box is raised up about 30 inches above decks, decked over, and caulked so she is tight to shed water. The Reaney had what I would call a pitched roof, meeting at a sharp angle at the top, and not caulked.

Ques. Which is most costly, a cargo-box or such a roof as the Reaney had?

Ans. The cargo-box is the most costly.

Ques. I understood you to say that, in addition to the repairs that were made on the Reaney, after her injury, that $400 more would have replaced the dennage, and roof, and hog-chain as before the injury. Did I understand you aright?

Ans. Yes, sir; I don't mean that would buy a new hog-chain, but that it would put the old one back.

Ques. If the Reaney, after having the repairs that were put on her, had the other repairs put on her, that is, the hog-chain, the roof,

447 and dennage, would she have been of any less value than she was before the injury?

Ans. Yes, sir, she would. I could not tell the number of dollars. I don't think any boat or barge, after she is broken up and repaired, is worth more than two-thirds what she was before.

Ques. Suppose she was an old barge, or her timbers were a good deal worn by constant usage for three or four years, would not taking out the old material and putting in new material better the conditions of the barge?

Ans. Yes, sir; many times in repairing barges and boats we take out timbers and put in new to better her condition.

Ques. Was not the barge Jack Reaney three or four years old before she was injured, and had she not been in constant use crossing the rapids up and down the Mississippi?

Ans. I don't know her age. I think she was a barge two or three years old from her appearances.

Ques. Is a barge that has been in constant use for ten or twelve

448 years in crossing the rapids over the Mississippi, and has suffered no injury except common wear and common usage, as much after two or three years of such usage as when she was taken fresh from the ways?

Ans. She is not.

Ques. What is the proportionate difference?

Ans. About 33⅓ per cent.

Ques. What would the Jack Reaney have been worth when new, according to your opinion?

Ans. From $5,000 to $6,000, it would have cost to build the Jack Reaney in 1868, the year I think she was built.

Ques. About how long do barges usually run before they need repairs?

Ans. From two to three seasons, except with caulking their top sides and decks.

H. M. PATTEN.

Witness fees, $4.50; mileage, 1.20—5.70.

Subscribed and sworn to before me this 24th day of August, 1872.

J. L. RICE, *Comm.*

449 H. C. GILLASPIE, witness of lawful age, being by me first duly sworn, deposes and says in answer to the following interrogatories:

(Taken in narrative form by consent, except when the parties desire to have the questions written out.)

My name is H. C. Gillaspie. Live in Keokuk, and am forty-two years old. My occupation is that of a licensed pilot on the Miss. River, and am captain also. Have had a license five and six years and over. I am acquainted with upper pier below Atlee's mill. Have not been up there much since the pier was built. Have been by there on a few trips. Have landed this spring right between the piers, to take on lumber. I landed between the upper pier and the shore. The boat was the steamer Cricket. She is about 22 feet wide. The width of the lighter I had in tow was also 22 feet wide. The lighter was alongside of the boat, 450 making the total width of boat and lighter forty-four feet. I came out around the gravel point above, and run down even with the upper pier, and then stopped and backed my boat, and swung around and came in between the two piers. I then came ahead and run the bow of the lighter until it was a little above even with the upper pier. I think it was in April or May of this year.

When I was in between the piers I was not very well acquainted with the depth of the water there, and some boys stuck a stick down when we were about on a line with the two piers and said it was six or seven feet deep. The river at that time I think was about two feet higher than it is now. There was about four feet on the rapids at that time. At the time I made that landing it was just a middling stage of water.

Outside the upper pier there is always good water, even at low 451 water, right up to the pier.

Ques. Have you been accustomed to seeing rafts moored along the shore of the river in the night-time?

Ans. I have.

Ques. What is the usual custom in regard to keeping lights on them while tied up there at night?

Ans. I have always found them with lights on them. That is the way I came to see them in the night.

Cross-examination:

At the time I was at Atlee's mill the water was three or 3½ feet above the lowest water. I cannot say positively, and would not swear positively.

She draws about 23 inches, and did when at Atlee's mill. The barge did not draw more than six or seven inches. I stopped at Atlee's mill to get some timbers for derricks for Patterson & Tounberman. There were no rafts lying between the pier and the shore. There were logs lying in above the gravel-bar and below French Creek. 452 The gravel-bar was then on the point of it. It was bare about as far out as the pier. I ran around the bar. There was not water enough to run over the point of it when I was there. I run up within 25 feet of the point of the gravel-bar, and came around the bar and about midway between that and the bar out towards the Illinois shore. This latter bar is 300 or 400 feet, probably, from the point of the gravel-bar in low water or middling stage of water.

Ques. How far do boats usually run in going up or down the river outside of that pier?

(Objected to, because pl'tffs have not asked a question in regard to the matter enquired about in this question of this witness.)

Ans. From fifty feet to seventy-five yards, sometimes more, and sometimes they come within 25 feet of the pier. It is all good water there. It is good water from the upper pier out four or five hundred feet—about as good water around the pier as there is there.

453 The boat and the lighter I had there about filled up the water-space between the pier and the shore. I cannot say positively how much water there was there. There was room for a steamboat there. The boat and lighter were about forty-four feet wide.

H. C. GILLESPIE.

Witness fees, $1.50. Paid by pl'ffs.

Subscribed and sworn to before me this 24th day of August, 1872.

J. L. RICE, *Comm.*

454 CHARLES GILLASPIE, witness of lawful age, for libellant, being by me first duly sworn, in answer to the following interrogatories deposes and says:

My name is Charles Gillaspie. Am 29 years of age, and live in Keokuk, Iowa. My occupation is that of pilot and steamboat-master. Am a licensed pilot, and have been for nine years.

I am familiar with the channel of the river about Atlee's mill, and have run it pretty often. I have landed steamboats at the Iowa shore between these piers, and think I have run over with steamboats the place where these piers stand. We used to run pretty close to the pier before they were put in.

I landed a steamboat between the piers about six weeks ago. When I had completed my landing, the boat was inside of a line drawn
455 between the piers. It was a pretty fair stage of water at the time.

The upper pier is pretty close to the channel; we run pretty close to the pier in going up, and pretty close to the point of gravel-bar.

Ques. If the upper pier was removed at an ordinary stage of water, state whether steamboats could run over place where it now stands.

Ans. I think they could.

I was running by there in season of 1870. Don't think pier was there then. I recollect seeing a rock-pile somewhere around there. Do not recollect the location of it.

At the time I went there the rock-pile was probably ten feet above water, and the water in the river was a pretty fair stage, I think, but would not be positive.

At a high stage of water the rock-pile would have been submerged with the water.

The channel, measuring from the upper pier across the river, I should judge is at present time from 150 to 200 feet wide.

There is a sand-bar opposite across from that gravel point.
456 From the gravel point out to the sand-bar, at a low stage of water, I don't think it is over one hundred feet. The bar throws the current of the river in towards the pier.

The current cutts off the point of the gravel point short. After leaving the landing at F't Madison boats run down from the shore pretty close after standing out from the levee at F't Madison—run close by the gravel point and 50 or 60 feet from the pier. At least I run that close to it; cannot say about others.

Ques. Suppose a steamboat, in running down the bend below F't Madison, should hold a straight course on line parallel with the shore to the

upper pier, does the gravel point extend out far enough at this stage to obstruct her passage to the pier?

Ans. I think not. I think the pier stands outside of the edge of the gravel-bar.

Ques. At a high stage of water, how deep should you think it would be over the gravel point?

457 Ans. It would depend on the wash of the creek. Since the rains this spring the gravel point has filled up pretty high, higher than usual. At a high stage, I judge there would be four or five feet of water over the top of the bar. Have frequently seen rafts pass by there. The current sets the rafts in towards the pier; I judge from the way the raft-pilots pull to keep them out.

Ques. To the best of you judgment what effect, if any, has that upper pier upon the perils and dangers of navigation?

Ans. On my part I always shun it, and keep out to keep away from it. The boat I am running is a small boat. It is not like a large boat. They swing around, and are harder to keep out than a small boat.

Ques. Suppose wind was blowing towards the Iowa shore, what difficulty, if any, would descending boats encounter at that point?

Ans. They would have to hold out pretty strong to keep from coming in contact with the pier, I think. I have frequently seen rafts tied along the shore of the river. They usually have lights on them. Have

458 passed upper pier when there was a high stage of water. At high water piers are four or five feet out of water. At a high stage of water in the night a descending pilot, on a bright night, could see the pier a couple of hundred yards, probably; on a dark night he could not see it at all.

Cross-examination:

Have known river at Atlee's mill nine or ten years; have been running by there that length of time.

Have frequently seen raft-logs tied there at his mill. Don't recollect of seeing them extend out beyond piers. At this present season they extend out as far as the piers, I think.

Pilots would not run against the rafts; they run pretty close to them. There is the same necessity for drawing boats out from the rafts as from the piers.

Ques. You have stated that the effect of the bar on the Illinois side is to give the boat flankage towards the Iowa shore; what birth

459 would you give the Illinois bar in order to overcome the flankage?

Ans. I would give it a very narrow birth. I would keep as close to it as I could.

Ques. Is there not some effect of flankage experience', in passing the gravelly bar just above the upper pier?

Ans. I think not, for this reason, that after the current passes the gravel point it has more of a chance to *to* spread, on account of being open below.

Ques. A former witness, H. C. Gillaspie, has spoken of having once gone on board the Cricket to Atlee's mill for timber for derricks, and that upon that occasion they went inside of the piers. If you were present on that occasion, describe the mode of landing the boat there.

Ans. I was not present.

C. P. GILLESPIE.

Witness fees $1.50, paid by pl't'ff.

Subscribed and sworn to before me this 26th day of Aug., 1872.

J. L. RICE, *Comm.*

460 R. B. HATCH, witness of lawful age, for libellant, in answer to the following interrogatories, deposes and says, after being duly sworn by me:

My name is R. B. Hatch; age about 37 years, and live in F't Madison, Iowa; my occupation is selling lumber on the Miss. River. I also run rafts on the Miss. River. Have been running and piloting rafts on Miss. River for fourteen years.

Am familiar with the channel of the river about Atlee's mill, and with the location of the piers there.

Have been accustomed to seeing steamboats pass by there frequently. Have frequently passed by there myself on steamboats.

Ques. From having frequently passed there on rafts and on steamboats, and from having frequently observed the passage of rafts and steamboats, are you familiar with the navigable channel of the river at that point?

(Objected to, witness not having shown himself to be an expert on these questions.)

Ans. I am.

461 Ques. How does that pier stand with reference to the navigable channel of the river?

Ans. It is in it.

Have frequently seen boats pass there before piers were built. They run right where it is in a fair stage of water.

Ques. What difficulty, if any, do log or lumber rafts encounter in passing that upper pier? State fully and particularly.

(Objected to as irrelevant and immaterial, no question of the kind being involved in this controversy.)

Ans. In a fair stage of water some trouble. In high water great difficulty. The natural set of the water is on to the pier. We have to pull hard to get by it. With a slight wind it is very difficult.

At a high stage of water it takes very hard pulling and a great deal of work to get it, the water sets in so strongly in the bend above and down that shore.

Will not be certain that upper pier was there in 1870. I was at F't Madison that year. I am not certain that pier was there; only rock-pile.

462 At the low stage of water that season, I don't remember how high the rock pile was out of water.

At a high stage it would have been covered; at an ordinary stage think it would have been covered, but am not so very sure about that. In April, 1871, the water was pretty high, quite high. At that time, should judge the pier was about four feet above water.

Ques. About how far could that have been seen in the night-time, without moon, by the pilot of a descending boat?

Ans. In a dark night, owing to the shade of the shore, but a very short distance. In a reasonably fair starlight night about two or three hundred yards. At that time the water was over that gravel point between five and six feet; deep enough for a large side-wheeled steamer to pass over it in safety. Do not remember to have seen light on pier before the accident. Has been lighted since. Have been in the habit of seeing rafts moored at Atlee's mill. During the fourteen years I

463 have lived there they did not extend quite so far out as the pier in a fair stage of water. They kept lights on them at night.

It is always the custom to keep lights on rafts when moored at the shore of the Miss. River. Our rules are to discharge a watchman

quicker for that than anything else, if he does not keep his lights burning and attend to it.

The lights are placed on the rafts as warnings and to prevent collisions.

Ques. In all these fourteen years have you ever known a raft to be moored at Atlee's mill without lights on it?

Ans. Never remember to have seen them without lights, up to the time the piers were built.

Ques. With reference to the navigation of the river, what does that pier constitute?

Ans. A great obstruction.

Ques. What effect, if any, has it upon the perils and dangers of navigation?

Ans. It increases them.

464 Cross-examination:

The pier, at an ordinary stage of water, is 200 or 225 feet from the Iowa bank. I merely judge from strings of lumber 200 feet anyhow. That is in high water. In low water it slopes down and makes a big difference. Low water makes a difference of 75 or 100 feet.

Ques. What space is requisite in mooring logs in a mill of that capacity, and situated as it is?

Ans. I should want 200 feet in width.

Ques. What is the character of the shore at Atlee's mill, as regards its sudden or gradual declivity?

Ans. It is hard to tell when water is low, it slopes considerably. It is deep water at the pier all the time. Thirty feet from the pier inside, it slopes gradually to a certain point, and then rises bluff.

Ques. Are you in any way interested in the N. W. Union Packet Co.?

Ans. Not at all.

Ques. Have you any interest in this cause?

Ans. None at all.

465 Ques. Have you been interested in procuring testimony in this cause?

Ans. I gave Mr. Davidson, the att'y, the names of some pilots, at Mr. Davidson's request.

Ques. Have you any particular interest in the event of this suit?

Ans. None.

Ques. Have you any interest in any lumber-yard, saw-mill, or lumber business at F't Madison?

Ans. None at all.

Redirect-examination:

Ques. State whethe' the att'y of the Packet Co. ever called at your house and asked you for the names of any pilots whom you might know, that were familiar with the river at that point?

Ans. He did, and it was in response to such inquiries that I gave the names.

ROBERT B. HATCH.

Witness fee, $3.00; mileage, $2.50—$5.50. Paid by pl'ff.

Subscribed and sworn to before me this 26' day of Aug'st, 1872.

J. L. RICE, *Comm.*

466 DISTRICT OF IOWA,
State of Iowa, Lee County, ss:

I, J. L. Rice, a special commissioner appointed by the district court of the United States for the district of Iowa, at Keokuk, to take the foregoing depositions, hereby certify that, on the 21st day of August, 1872, and from that day until the 26th day of August, 1872, inclusive, there severally came before me, at Keokuk, Lee County, Iowa, G. W. Duncan, Jerome Ruby, Aaron A. Scott, O. M. Ruby, Henry G. Carson, John Griggs, Harrison West, W. W. Kinnear, H. M. Patton, H. C. Gillaspie, Chas. Gillaspie, and Robert B. Hatch; that they, having been by me first duly and severally sworn according to law, I there and at said times proceeded to take their depositions in accordance with the argument of the parties as to time and place and under the order of the said court, where and at which times the said depositions were
467 by me reduced to writing in the order in which they stand in the foregoing pages; that said depositions, after having been written down, were by me read over to the said deponents and by them duly subscribed and sworn to before me and in my presence on the days and in the year and at the place aforesaid; and I further certify that there were present at said times J. Harme Davidson, and Howell & Rice, att'ys for libellant, and McCrary, Miller & McCrary, and P. T. Lomax, att'ys for respondent, and that the deposition of each deponent was taken separate and apart from the others.

I further certify that said depositions were taken by agreement of the said parties, and were taken down in narrative form by agreement of said parties, except when the parties or each of them desired to have the questions written out, in which case said questions were so written out.

In testimony whereof I have hereunto set my hand this 16th day of September, 1872.

J. L. RICE,
Special Commissioner.

Commissioner's fees, $55.50.

468 (Endorsed:) N. W. Union Packet Co., libellant, vs. Sam'l Atlee, respondent. Depositions of witnesses on part of libellant, G. W. Duncan, and others. Filed Sept. 16, 1872. H. K. Love, clerk, by E. J. Leech, dep. Filed Oct. 10, 1872. George B. Corkhill, clerk.

469 UNITED STATES OF AMERICA,
State of Iowa, ss:

District court for district of Iowa, at Keokuk.

NORTHWESTERN UNION PACKET CO., LIBELLANT, *ag'st* SAMUEL ATLEE, RESPONDENT. } Admiralty.

Depositions of sundry witnesses, to be used on the trial of the above cause, taken before D. F. Miller, j'r, at F't Madison, Iowa, in pursuance of the order of Hon. J. M. Love, in admiralty, judge of the above court, at Keokuk, on the 2nd day of Sept., 1872.

On the 2nd day of Sept., 1872, came before me libellant, by its attorney, Howell & Rice, and respondent, by McCleary, Miller & McCleary,

and thereupon libellant produced W. R. Slocumb, witness of lawful age, who, being first duly sworn according to law, testifies as follows:

Direct testimony.

W. R. SLOCUMB, witness of lawful age, presented by libellant, being duly sworn, testifies as follows:

1st Q. State your name, age, place of residence, and occupation.

470 A. My name is W. B. Slocumb; thirty-two years of age; reside in Reid's Landing, Minn. My occupation is that of a pilot.

2. Q. State whether you have a license as a pilot.

A. Yes, sir, I have.

3. Q. State where you were on the night of April 23, 1871, when the steamer Phil Sheridan came down by F't Madison with the barge Jack Reaney in tow?

A. I was standing on the stern of the steamer Champion, at the levee at F't Madison.

3. Q. State what kind of a night it was; light or dark?

A. It was a dark night.

4. Q. State what you saw.

A. I saw the boat when it passed the Champion, and saw her strike the pier at Atlee's mill. I did not see it strike; I heard the crash. I saw the barge the next morning right below the pier.

5. Q. State, if you know, the depth of the water around that upper pier.

A. I don't know exactly. I have always thought there was pretty good water there.

6. Q. Where does that pier stand with reference to the channel of the river?

471 A. It stands, I think, in the right-hand side of the channel, going down stream.

7. Q. What difficulty, if any, do boats and rafts experience in passing that pier?

A. A raft has to commence pulling some distance above the pier, in order to avoid hitting it. The water sets in there very strong.

8. Q. Did you ever hit those piers yourself?

A. No, sir, not with a raft. I rub'ed it with a raft last summer, once morning just daylight.

9. Q. What does that pier constitute, in your opinion, so far as the navigation of the river is concerned?

A. I think, like all others, it is a regular nuisance, so far as navigating the Mississippi is concerned.

Cross-examination by respondent:

1st Q. What is the date of your license as a pilot?

A. I think this is the 6th season.

2. Q. How often have you piloted a steamboat from St. Louis to St. Paul by this river?

A. Not from St. Paul at all. My license is from Reid's Land-

472 ing. I never was on a packet. I am a raft-pilot, towing rafts with a small boat.

3 Q. How many rafts have you piloted by this town?

A. There was one year I did not run passed this place. Sometimes I run to this place and stopped, but seldom. I have run passed here six or seven times a year for five years.

4 Q. How often have you piloted a raft passed there since Atlee erected those piers?

A. All last season and all this season. I have made 10 or 12 trips, more or less.

5 Q. What was the state of the weather when you say that your raft rubbed Atlee's pier?

A. I can't say; it was some time ago. It was either this spring or last spring, I cannot say which. We have so many of these things happen that we pay no attention to it. I mean by getting into these little difficulties, hitting bridges, &c.

6 Q. Did you ever observe any rafts tied to the shore in front of Atlee's mills, above the upper pier; and, if so, did not said rafts extend further out into the channel than the piers?

473 A. I don't know that I ever noticed rafts sticking out there, but I have seen them dropping logs in. I have seen rafts inside of the pier, but never noticed any outside. I have seen them scattered there, but never noticed them particularly.

7 Q. You frequently pass in the night-time with your rafts?

A. If we happen to lay up at Ft Madison we get out about 3 or 4 o'clock in the morning, and we keep going any how, whether it is light or not.

8 Q. Was it in the night-time when you rubbed the pier at the time you speak of, and who was piloting?

A. I was running the raft at the time. I was standing on the boat. If I had not *of* been, I probably would not have known it; it was just getting light.

9. Q. Is not a raft, even when managed by one of these small boats, much more difficult to manage than a steamboat?

A. I should think they was.

10. Q. What is the width of the channel of the river directly opposite the upper Atlee pier, in an ordinary state of water?

474 A. I never measured it; I should think it is about 250 or 300 feet. I never measured; I give a rough guess.

11. Q. Have you ever observed the gravel-bank at the mouth of French creek, above the upper pier; if so, what direction does the water take after passing said gravel-bank?

A. I have noticed it—yes. It runs right straight down the river. I should think the water running against the point of that bar would naturally turn the water out toward the Ill's shore. You cannot run a raft on shoal water, for they have a tendency to draw to deep water, and as soon as you strike the point the channel forces it out into the river. You could not force a raft out to a bar where there is not water, unless some wind carries you there.

12. Q. Do you consider the gravel-bank, at the mouth of French creek, an obstruction to navigation?

A. I can't answer that question. It is a hard question to answer. I can say whether it was or was not; it never interefered with me.

475 13. Q. Did the upper Atlee pier ever interfere with you except on that one occasion?

A. No, sir.

14. Q. Do you recollect of seeing a pile of rocks where the pier now stands, in the fall of 1869 or spring of 1870?

A. Yes, sir; I recollect of seeing it in the fall of 1869 or spring 1870; It was smaller than this now. I saw the water dash over it from the waves of boats.

15. Q. Did you ever make any measurement of the water at or near the upper Atlee pier?

A. No; I never measured it.

16. Q. You have never piloted a steamboat, except as a propeller for a raft, a-pass*ed* this pier?

A. That is all, sir; with a tow or raft boat.

17. Q. How far from the said upper do you usually run in an ordinary stage of water?

A. We run far enough to miss it if we can get out.

18. Q. A skilful pilot would have no trouble in getting out into the channel far enough to miss the gravel-bank at the mouth of French creek and the upper pier?

476 A. That is rather a hard question to answer. The wind very often blows a raft on shore. The wind m'y be in your favor and sometimes against you.

19. Q. Supposing the wind was blowing towards the Iowa shore, as you were passing this town, wouldn't it require as much effort and skill to keep your rafts off of the gravel-bank as off of the upper Atlee pier?

A. Why, no; I should think not. The water runs away from the point, and with the pier it divides the water in two.

20. Q. Have you ever been blown on that gravel-point?

A. No.

21. Q. Have you ever seen a steamer pass up or down the river a-pass the upper pier?

A. Why, certainly.

22. Q. How far to the left of the upper pier did said steamer pass?

A. Some run closer, some don't run quite so close. Steamboatmen generally try to run in the middle of the channel; sometimes they get on one side, sometimes on the other.

Redirect examination:

447 1st Q. Does or does not the current of the river, after passing by the gravel-bar, flow right along where the piers are?

(Objected to as leading. Question withdrawn by libellant.)

1st Q. Where does the current flow with reference to the pier?

A. It runs right straight along anywhere between rear of the bar and the bank of the river.

2. Q. How does the water set at the pier?

A. The water naturally sets toward the Iowa shore until you get below the lower pier, and then it strikes for the Ill's shore.

3. Q. What effort is necessary to keep rafts off from that upper pier?

A. You must commence to pull; must not wait until you get down there, for if you do, you will hit it.

Recross-examination:

1st Q. Is there any necessity of an ordinary steamer, in an ordinary stage of water, and skilfully piloted, striking the gravel-bar on the upper pier?

478 A. It does not make any difference how skilful a pilot is, he is apt to hit anything on a dark night.

2. Q. Was it day-light, twilight, star-light, moon-light, or dark, when this collision occurred?

A. It was quite a dark night, and I had been up town with a lantern for a doctor for one of the boys, who was sick. I don't know whether the stars were shining or not; I am certain the moon was not shining. It was about 11 or 12 o'clock in the night.

3. Q. In whose employ are you now?
Knapp, Stouts & Co's. I have never been in the employ of the N. W. U. Packet Co.

Redirect examination:

1. Q. On such a night as you have described it, did or did not that upper pier render the navigation of the river more dangerous?
(Objected to as leading.)
A. The less room a man has of a night the more likely he is to keep his eye skinned. Certainly I should think it did render it more dangerous.

W. R. SOCCUMD.

479 Subscribed and sworn to before me this 2d day of September, 1872.

D. F. MILLER,
Commissioner.

UNITED STATES OF AMERICA,
State of Iowa, ss:

District court for district of Iowa, at Keokuk.

NORTHWESTERN UNION PACKET CO., LIBELLANT, *ag'st* SAMUEL ATLEE, RESPONDENT. } Admiralty.

I, D. F. Miller, jr., a commissioner appointed by the Hon. J. M. Love, in pursuance of an agreement of the att'ys in the above cause, do hereby certify that, on the 2ond day of Sept., 1872, in presence of Howell & Rice, att'ys for libellant, and John Van Valkenberg, appearing for McCrary, Miller & McCrary, att'ys for respondent, I proceeded to take the testimony of W. R. Slocumb, at the court-house in Fort Madison, Iowa, who was then and there sworn by me, and *their* examination reduced to writing; and after being read over to said deponent, the same was subscribed and sworn to by *me* and in my presence, and the testimony so taken is now herewith returned.

D. F. MILLER, J'R,
Commissioner.

Fees of com'r for taking foregoing testimony, $4.15.

480 Rec'd pay't by libellant.

D. F. MILLER, J'R, *Com'r.*

(Endorsed:) Northwestern Union Packet Company vs. Sam'l Atlee. Deposition. Opened & filed Sept. 14, 1872. H. K. Love, clerk, by Erie J. Leech, dep. Filed Oct. 10, 1872. George B. Corkhill, clerk.

481 District court of the United States, district of Iowa.

NORTHWESTERN UNION PACKET CO. *vs.* SAMUEL ATLEE.

Deposition of J. A. Woolvertson, taken before me in the above-entitled caused, by virtue of the commission hereto attached.

Interrogatories propounded to J. A. Woolverton & answers thereto.

1st. State your name, age, and place of residence.

Ans. My name is Jos. A. Woolverton; age, 43 years; live in Muscatine, Iowa; but am staying at Keithsberg, Ill., at present.

2. Do you know the parties to this suit?

Ans. I know them both.

3. State your occupation, and what your occupation was in the spring and summer of 1871, and how long you had been engaged in such occupation.

Ans. I am ship-carpenter & boat-builder; & this was my occupation in the spring & summer of 1871, & have been engaged at it some 30 years.

482 4. State whether you knew the barge Jack Reaney?

Ans. I did.

5. If you state you knew said barge, state when you first saw her, & where.

Ans. I saw her two or three years ago, first, on the Mississippi River. Cannot answer more definitely.

6. State what, if anything, you knew about the sinking of said barge in spring of 1871, near the town of Fort Madison, Iowa.

Ans. I saw the barge sunk there; but knew nothing about the sinking, as I was not there at the time she sunk. I saw her about a week after she sunk.

7. State whether you saw her shortly before the collision by which she was sunk. If so, give description of her and of her condition.

Ans. I saw her in the fall before she sunk. She appeared be in good order and condition; but I made no particular examination of her. She was a well-built barge.

483 8th. If you state you so saw her, describe her cargo-box, inside floor, hog-chain, and how they were constructed, and whether in good order and condition.

Ans. She had a roof cargo-box running up to a peak, made of matched lumber. Did not examine inside floor. She had a good hog-chain. It was an inch & a-half or inch & a-quarter hog-chain, running from one end of the barge to the other, with *these* hog-chain posts or braces. Cargo-box and hog-chain appeared to be in good condition.

9th. State, if you know, what was her condition as to sea-worthiness before said collision.

Ans. She was sea-worthy and in good condition.

10th. Give description of said barge after collision, and state what injuries, if any, she had received from said collision, in detail; and give particular description of her cargo-box, inside floor, & lining, hog-chain, &c., side & bottom, & how injured, if at all.

484 Ans. There was about 20 feet of her broke in amidships, nearly to her main kelson; a hole stove in each end of the barge; on one five streaker-plank & ten frames broke; knuckle-kelson & breast-hook broke; on the other end there was five frames broke and two streaker-plank and knuckle-kelson brok'; on the opposite side from the break, her butts were all open & seams sprung apart from half-inch to inch & a-half, & fifty feet in length or thereabouts; her decks & bottom & side were stove in nearly to her main kelson; midship cargo-box was stove in; inside floor and lining was stove in; hog-chain was, a part of it, in her; her general condition was very bad indeed.

11. State what, if anything, you had to do with said barge after she sank.

Ans. The barge was partly raised when I got there. I finished raising her, and repaired her all up, & launched her again.

485 12th. If you state that you repaired or helped to repair her,

state exactly what you did in so repairing her; the time you were engaged in repairing her, and the cost of said repairs; give as near as you can the cost of materials and price paid for labor, &c.

Ans. I was engaged about six weeks in making the repairs. I put in about 30 feet new side of the barge; about twenty-five floor-timbers; put on about 25 feet of new bottom; nearly all new from the main kelson to the knuckle on one side, & set up the plank & refastened the other side of the bottom; put in ten new timbers on one end & part of a new breast-hook, 20 feet of knuckle-kelson & five streaker-plank; on the other end put in five new frames and a piece of knuckle-kelson & two streaker-plank; midships, had to put on 50 feet of outside-knuckle & same of inside-knuckle, & twenty new top-timbers, & same of new foot-locks; put about 60 feet of new arch inside, which was in place
486 of ceiling; put in 40 feet of main chains, 70 feet of plank-sheer or covering board; about a thousand feet of new deck; had to refasten her nearly all through & caulk her all over, and painted her where she was broke; refastened her main kelson; she was raised or screwed up out of the mud, & blocked up some to get at her to work. I put on also about 60 feet of nosing on the broken side. I cannot state the cost of said repairs; I made returns of the same to W. W. Kimnar, of material, time, labor, and everything, and did not keep a copy of the returns & am therefore unable to tell cost of repairs. The cost of labor was from two to five dollars per day.

13th. If you state said barge was injured, state in what part she was injured, and give details of repairs made to each part of her if you can.

Ans. I have already answered in reply to former interrogatories as fully as I can.

14th. Besides the parts of said barge which were repaired,
487 state what other parts were injured, if any, and her general condition after being repaired.

Ans. She was injured all over as I have already stated in detail; her general condition, after being repaired, was only middling. The work was well done, but the old fast'ing could not be brought back to its place.

15th. State what became of her cargo-box, inside floor and lining, and hog-chain, and whether they were replaced or not.

Ans. Her cargo-box was not put on again; it had all to be torn off, and was not put on again; inside floor and lining was broke & destroyed in getting it out; hog-chain was all saved but was not put in again.

16th. If you state they were not replaced, state what it would have cost to replace them, and give cost of each.

Ans. It would have cost about $300 to replace the cargo box, and about $225 to replace the inside floor & lining, and about $20 to replace the hog-chain.

488 17th. If you say that said barge was weakened, sprung, and wrested out of shape by said collision, state, from your knowledge of such barges, their construction and repairs, whether she could have been made as good, strong, staunch, sea-worthy and valuable after the collision as she was before.

Ans. As I have already stated the barge was sprung & wrenched to pieces, and she could not be made as good, strong, staunch, sea-worthy, & valuable after the collision as she was before.

18. If you state that she could not, then state the difference between the value of said barge as she was before the collision, and what her value would have been after the collision if she had been as fully repaired as she could have been, and had her cargo-box, inside floor and lining, & hog-chain, &c., replaced.

489 Ans. The difference would be about $300; she would be worth that much less.

19th. State the difference in her value before the collision, and her value as she was after the repairs were put on her; cargo-box, inside-floor, & lining, hog-chain, &c. being gone and not replaced.

Ans. From $800 to $1,000 or thereabouts.

20th. State, if you can, the stage of water at Fort Madison, Iowa, and whether high or low from Ap'l 23, 1871, to July 24, 1871, and state whether or not said barge could have been raised in the water she was there lying in and repaired, during that time, by being bulk-headed or otherwise.

Ans. The water was very high between the dates named, and the barge could not have been bulk-headed & raised.

21st. State, if you know, what efforts were made to raise and
490 repair said barge before you went to work on her, and what steps were taken for that purpose, and what preparations made.

Ans. I can only state generally that two or three boats were there & tried to raise her and gave it up.

22d. State how many days you & the man under you were engaged in making the repairs you made on her.

Ans. The time was about six weeks, as near as I can tell.

23d. State from your knowledge of such barges, their construction and repairs, whether said barge could, by any amount of repairs, have been put in as good condition as she was before the collision.

Ans. No; she could not.

24th. If you state that said barge could have been put in as good condition as she was before the collision and made as strong, staunch, and valuable as she was before, state how much it would have cost to
491 make her as good as she *as she* was before.

Ans. I have already that she could not, by repairs, be made as good and valuable as before the collision.

25th. State from your knowledge of such matters what effect it would have had on said barge to have attempted to raise her as she lay in the *matter* between Ap'l 23 and July 24, 1871, in her disabled and injured condition, and whether or not, she could have been repaired before the water fell sufficiently to let her, or a large part of her, rest on dry ground.

Ans. An attempt to raise the barge would most likely have caused her to break in two. She could not have been repaired until the water fell enough to let her rest on the ground.

26th. State, if you know, what the value of the use of said barge as she was before the collision, and similar barges was, per day, between Ap'l 23, 1871, and September 1, 1871, on the Mississippi River be-
492 tween St. Louis & St. Paul.

Ans. They were worth about ten dollars per day.

J. A. WOOLBERTON.

Cross-interrogatories filed by clerk under sec. 4072, revision of 1860.

1. Are you directly or indirectly interested in this action; and if interested explain the interest you have?

Ans. I have no interest whatever in the matter.

2. Are all your statements in the foregoing answers made from your personal knowledge; and if not, do your answers show what are made from your personal knowledge and what from information and another source of that information; if not now show what is from information and give its source.

Ans. My answers are all made from my own personal knowledge, except where it is otherwise stated in said answers.

3. State everything you know concerning the subject of this action.

493 Ans. I have already done so as fully as I am able to do.

J. A. WOOLBURTON.

STATE OF IOWA,
Muscatine County:

I, D. C. Richman, a notary public in and for said county, and duly commissioned thereto by the district court of the United States in & for the district of Iowa as set forth in the annexed commission, do hereby certify that J. A. Woolverton, witness in the above-entitled cause, was by me first solemnly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition subscribed by him as above set forth was reduced to writing by me in the presence of said witness; that the whole of said deposition was read over by me to said witness, and was by him subscribed and sworn to in my presence, on this 3d day of August, A. D. 1872.

494 Witness my hand and notarial seal the date above written.

[NOTARIAL SEAL.] D. C. RICHMAN,
Notary Public & Commissioner.

Witness fees	$1 50
Mileage	3 50
	5 00
Com's fees	15 00
	$20 00
Postage	18
	$20 18

Rec'd above fees & costs of Howell & Rice.

D. C. RICHMAN, *Com'r.*

495 UNITED STATES OF AMERICA,
District of Iowa, ss:

To D. C. Richman, notary public, at Muscatine, Muscatine County, Iowa:

Know ye, that we, the district court of the United States, district of Iowa, reposing full confidence in your integrity and fidelity, do by these presents empower and commission you to summon or cause to come before you at such time and place as you shall appoint according to the notice hereto accompanying, one J. A. Woolverton, a material witness, as it is said, on the part and in behalf of plaintiff in a suit wherein the Northwestern Union Packet Company is plaintiff, and Samuel Atlee is defendant, now pending in our said district court, and him to examine, his corporal oath or affirmation first to him administered, true answer to make to the several interrogatories accompanying this commission, and the same, when taken, to certify, seal up, and forward to the clerk of said district court with all convenient speed.

496 Witness Hon. James M. Love, judge of said court and the seal thereof affixed at Keokuk, in said district, this 30 day of July, A. D. 1872.

[U. S. DIST. COURT SEAL.] H. K. LOVE, *Clerk.*
By ERIE J. LEECH, *Dep.*

(Endorsed:) Commission.

497 In district court of the United States for the district of Iowa at Keokuk. In admiralty.

NORTHWESTERN UNION PACKET COMPANY
vs.
SAMUEL ATLEE.

To Samuel Atlee, or McCrary, Miller & McCrary, att'ys aforesaid for said Sam'l Atlee:

You are hereby notified that five days after the service of this notice upon you, the above-named libellant will sue out of the office of the clerk of the district court of the United States for the district of Iowa, at Keokuk, a commission to take the deposition of J. A. Woolverton on the interrogatories hereto attached, which depositions will be taken before D. C. Richman, notary public, at Muscatine, Muscatine County, Iowa and will be used on the trial of said cause on the part of libellant, of all which you will take due notice and file cross-interrogatories.

July 24, 1872.

J. HAM. DAVIDSON &
HOWELL & RICE,
Att'ys for Libellant.

498 Interrogatories to be propounded to J. A. Woolverten.

Int. 1. State your name, age, and place of residence.

Int. 2. Do you know the parties to this suit.

Int. 3. State your occupation, and what your occupation was in the spring and summer of 1871, and how long you had been engaged in said occupation.

Int. 4. State whether you knew the barge Jack Reaney.

Int. 5. If you state you knew said barge, state when you first saw her and where.

Int. 6. State what, if anything, you knew about the sinking of said barge in spring of 1871, near the town of F't Madison, Iowa.

Int. 7. State whether you saw her shortly before the collision by which she was sunk; if so, give description of her and of her condition.

499 Int. 8. If you state you so saw her, describe her cargo-box, inside floor, hog-chain, and how they were constructed, and whether in good order and condition.

Int. 9. State, if you know, what was her condition as to sea-worthiness before said collision.

Int. 10. Give description of said barge after collision and state what injuries, if any, she had received from said collision in detail, and give particular description of her cargo-box, inside floor and lining, hog-chain, &c., side and bottom, and how injured, if at all?

Int. 11. State what, if anything, you had to do with said barge after she sank.

Int. 12. If you state that you repaired or helped to repair her, state exactly what you did in so repairing her; the time you were engaged in repairing her, and the cost of said repairs; give as near as you

500 can, the cost of materials and price paid for labor, &c.

Int. 13. If you state said barge was injured, state in what part she was injured, and give details of repairs made to each part of her, if you can.

Int. 14. Besides the parts of said barge which were repaired, state what other parts were injured, if any, and her general condition after being repaired.

Int. 15. State what became of her cargo-box, inside floor and lining and hog-chain, and whether they were replaced or not?

Int. 16. If you state they were not replaced, state what it would have cost to replace them, and give cost of each.

Int. 17. If you say that said barge was weakened, sprung, and wrested out of shape by said collision, state from your knowledge of such barges, their construction and repairs, whether she could have been made as good, strong, staunch, sea-worthy, and valuable after the collision as she was before.

501 Int. 18. If you state that she could not, then state the difference between the value of said barge, as she was before the collision, and what her value would have been after the collision, if she had been as fully repaired as she could have been and had had her cargo-box, inside floor and lining, and hog-chain so replaced.

Int. 19. State the difference in her value before the collision and her value as she was after the repairs were put on her, her cargo-box, inside floor and lining, hog-chain, &c., being gone and not replaced.

Int. 20. State, if you can, the stage of water at F't Madison, Iowa, and whether high or low from Apr. 23, 1871, to July 24, 1871, and state whether or not said barge could have been raised in the water she was then lying in and repaired during that time, by deing bulk-headed or otherwise.

502 Int. 21. State, if you know, what efforts were made to raise and repair said barge before you went to work on her, and what steps were taken for that purpose and what preparations made.

Int. 22. State how many days you, and the men under you, were engaged in making the repairs you made on her.

Int. 23. State from your knowledge of such barges, their construction and repairs, whether said barge could, by any amount of repairs, have been put in as good condition as she was before the collision.

Int. 24. If you state that said barge could have been put in as good condition as she was before the collision, and made as strong, staunch, and valuable as she was before, state how much it would have cost to make her as good as she was before.

Int. 25. State, from your knowledge of such matters, what effect it would have had on said barge to have attempted to raise her as
503 she lay in the water between Apr. 23, and July 24, 1871, in her disabled and injured condition, and whether or not she could have been repaired before the water fell sufficiently to let her, or a large part of her, rest on dry ground.

Int. 26. State, if you know, what the value of the use of said barge (as she was before collision) and similar barges was per day between Ap'l 23, 1871, and September, 1871, on the Miss. River, between St. Louis and St. Paul.

J. HAM. DAVIDSON &
HOWELL & RICE,
for Pl'ff.

504 I hereby appoint Andrew Brown, special dep't United States marshal, to serve this writ.
Keokuk, July 24, 1852.

PETER MELENDY,
United States Marshall.

This notice and the interrogatories attached came into my hands on the 24th day of July, 1872, and I served the same personally on the

within-named Samuel Atlee, by reading the same to him personally and by delivering a true copy of said notice and interrogatories to him personally in the city of F't Madison, Lee County, Iowa, on the said 24th of July, 1872.

July 25, 1872.

PETER MELINDA, *U. S. M.*
ANDREW BROWN,
Spacial Dep'ty U. S. M.

STATE OF IOWA,
Lee County, ss:

I, Andrew Brown, being duly sworn state, that I am the person
505 who made the foregoing service and return, and state that the statements contained in said return are true.

ANDREW BROWN.

Subscribed and sworn to before me this 26th day of July, 1872.
[NOTARIAL SEAL.] A. C. FALCOMER,
Notary Pub.

Marshel's fees: servis of 'rit, $2.00; copy, $1.00; milige, $2.50=5.50

(Endorsed:) Northwestern Union Packet Co. vs. Sam'l Atlee.

506 Cross-interrogatories filed by clerk under sec. 4070, revision of 1860.

1. Are you directly or indirectly interested in this action; and, if interested, explain interest you have.

2. Are all your statements in the foregoing answers made from your personal knowledge; and, if not, do your answer, show what are made from your personal knowledge, and what from information, and the source of that information; if not, now show what is from information, and give its source.

3. State everything you know concerning the subject of this action.

H. K. LOVE,
Clk U. S. D. C.
By ERIE J. LEECH,
Deputy.

(Endorsed:) N. W. U. Packet Co. vs. Sam'l Atlee. Deposition J. O. Woolverton. Opened by agreement of parties & filed August 7th, 1872. H. K. Love, clerk, by Erie J. Leech, deputy. Filed Oct. 10, 1872. George B. Corkhill, clerk.

507 UNITED STATES OF AMERICA,
District of Iowa.

To D. D. Duncan, a notary public, in and for St. Louis County, St. Louis, Mo.:

Know ye, that we, the district court of the United States, district of Iowa, reposing full confidence in your integrity and fidelity, do, by these presents constitute, empower, and commission you to summon or cause to come before you at such time and place as you shall appoint, according to the notice hereto accompanying, the following-named persons: W. Redpath, W. H. Barnes, G. W. Duncan, W. F. Davidson, material

witnesses it is said on the part and in behalf of plaintiff, in a suit wherein The Northwestern Union Packet Company is plaintiff, and Samuel Atlee is defendant, now pendin' in ou' said court, and them examine, on their corporal oath or affirmation, first to them administered, true answer to make to the several interrogatories accompanying this commis-
508 sion, and the same when taken to certify, seal up, and forward to the clerk of said district court with all convenient speed.

Witness Hon. James M. Love, judge of said court, and the seal thereof affixed at Koekuk, in said district, this 30th day of July, A. D. 1872.

Attest:

{ DISTRICT COURT U. S. DISTRICT OF IOWA, KEOKUK, SEAL. } H. K. LOVE, *Clerk*, By ERIE J. LEECH, *Deputy*.

(Endorsed :) Commission.

509 NORTHWESTERN UNION PACKET COMPANY *vs.* SAMUEL ATLEE.

Now comes the defendant, and excepts to question 9 of pl't'ff's question as not relevant to the issues in the case; question 10 objected to for same reason; question 11 objected to for same reason; question 12 excepted to because not relevant nor material; question 13 excepted for same reason as question 12; question 14 excepted to for same reason as question 12; question 15 objected to as not relevant or material; question 16 objected to as not competent to introduce statement from books of pl't'ff; the same is secondary evidence; in. 17 objected to as not furnishing def't an opportunity to cross-examine.

McCRARY, MILLER & McCRARY & P. T. SAN, *Att'ys for Def't.*

(over.)

510 And def'ts file cross-questions as follows:

Ques. 1. Was not said barge Jack Reaney insured; and, if yea, in what insurance company was she insured?

Ques. 2. Was not the freight on said barge insured; and, if yea, how much was she insured for?

Ques. 3. How much insurance-money has been received, either on account of the injury to the barge Jack Reaney or the freight in cargo on board of her when injured? Give particulars.

Ques. 4. State your business and occupation, and how long you have been in that business, and for whom you now work.

McCRARY, MILLER & McCRARY, *Att'ys for Def't.*

511 In district court of the United States for the district of Iowa, at Keokuk.—In admiralty.

NORTHWESTERN UNION PACKET COMPANY *vs.* SAMUEL ATLEE.

To Samuel Atlee, or McCrary, Miller & McCrary, att'ys of record for said Sam'l Atlee:

You are hereby notified that five days after the service of this notice upon you the above-named libel'ant will sue out of the office of clerk

of the district court of the United States for the district of Iowa, at Keokuk, a commission to take the depositions of the following-named witnesses: W. Redpath, W. H. Barnes, G. W. Duncan, and W. T. Davidson, on the interrogations hereto attached, which depositions will be taken before D. D. Duncan, notary public, at St. Louis, St. Louis County, Mo., and will be used on the trial of said cause on the part of libel'ant; of all which you will take due notice and file
512 cross-interrogatories.

July 24, 1872.

J. HAM. DAVIDSON &
HOWELL & RICE,
Att'ys for Libellant.

Interrogations to be propounded to W. Redpath, W. H. Barnes, and W. F. Davidson:

Ques. 1. State your name, age, and place of residence.

Ques. 2. Do you know the parties to this suit?

Ques. 3. State in whose employ you were, and in what business engaged, on or about April 23, 1871, and in whose employ you now are, and in what business engaged.

Ques. 4. State what knowledge, if any, you had of the barge Jack Reaney on or prior to April 23, 1871.

Ques. 5. State what, if anything, you know of the sinking of said barge on or about April 23, 1871, near the town of F't Madison, Iowa, while in tow of the steamboat Phil Sheridan on a trip from St. Paul to St. Louis.

Ques. 6. State, if you know, to whom said boat and said barge belonged at the time.

Ques. 7. If you state that you knew said barge, state what the
513 value of the use of said barge would have been per day from April 23, 1871, to Sept. 1st, 1871, if she had been in the same condition she was in before she sunk.

Ques. 8. State the value of the use per day of similar barges between said dates, in the Upper Mississippi River, between St. Paul and St. Louis.

Ques. 9. State what, if anything, you knew in regard to the amount of freight between said places for shipment on the Miss. River between said dates.

Ques. 10. State what, if anything, you may know in regard to their being a demand for the use of this and similar barges on the Miss. River, between St. Paul and St. Louis, between said dates.

Ques. 11. State, if you know, what cargo, and other property, if any, said barge had on board at the time she sunk; to what place it was consigned; the amount of said cargo, and of what it consisted, and what part of said cargo and other property, if any, was lost by the
514 sinking of said barge.

Ques. 12. State, if you know, how much freight was lost by the sinking of said barge, and give particulars.

Ques. 13. State, if you know, what the freight of the cargo and other property in said boat and barge on said trip amounted to, and to whom said freight belonged, and what amount was lost from the entire freight-list of said barge in that trip by reason of the sinking of said barge.

Ques. 14. State how much shortage there was, if any, in the amount of freight on the arrival of the Phil Sheridan at St. Louis on that trip, caused by the sinking of said barge, and how you arrive at the result.

Ques. 15. State what injury, if any, was done to the cargo and other

property, if any, on said barge by her sinking on said trip, and the amount of the injury, and give particulars.

Ques. 16. Examine aney written entry you may have made
515 in the books of the company (pl't'ff) in regard to the loss of said cargo, property, or freight, or injury to said cargo and property, and attach copies of same to your deposition, with any vouchers you may have showing amount of same.

Ques. 17. State any other loss you may know that pl'ff sustained by reason of sinking of said barge.

J. HAM. DAVIDSON &
HOWELL & RICE,
Att'ys f' Pl'ff't.

Interrogations to be propounded to G. W. Duncan:

Int. 1. State your name, age, and place of residence.

Int. 2. Do you know the parties to this suit?

Int. 3. State what your occupation was during the spring of 1871.

Int. 4. State whether you knew the barge Jack Reaney; and, if so, when and where you first saw her.

Int. 5. State what, if anything, you know about the sinking of said barge, in spring of 1871, near the town of F't Madison, Iowa.

516 Int. 6. State whether you saw her shortly before the collision by which she was sunk; if so, give a description of her and of her condition.

Int. 7. If you state you so saw her, give a description of her cargo-box, inside floor and lining, hog-chain, and how they were constructed, and whether in good order and condition.

Int. 8. State, if you know, what was her condition as to sea-worthiness before said collision.

Int. 9. Give description of said barge as she was after said collision, and state what injuries, if any, she had received from said collision; particularly in regard to her cargo-box, inside floor and lining, and hog-chain, and side and bottom, and how they were injured, if they were injured.

Int. 10. State what became of her cargo-box, inside lining and floor, and hog-chain, and whether they were replaced or not.

Int. 11. Besides the parts of said barge which were repaired, state what other parts were injured, if any.

517 Int. 12. If you state that said barge was weakened, sp'ung, and twisted out of shape by said collision, state, from your knowledge of such barges, their construction and repairs, whether they could have been made as good, strong, staunch, sea-worthy, and reliable after the collision as she was before.

Int. 13. If you state that she could not, then state the difference between the value of said barge as she was before the collision and what her value would have been after the collision if she had been as fully repaired as she could have been, and had had her cargo-box, inside floor and lining, and hog-chain, &c., replaced.

Int. 14. State the difference in her value before the collision and her value as she was after the repairs were put upon her, her cargo-box, inside floor and dun'ing, hog-chain, &c., being gone and not replaced.

Int. 15 State, if you can, the stage of water at Fo't Madison, and whether high or low, from April 23, 1871, to July 24, 1871; and
518 state whether or not said barge could have been raised in the water she was then lying in, and repaired during that time by being bulkheaded or otherwise.

Int. 16. State what efforts, if any, you made to raise and repair said barge, and what steps were taken and what preparations made for that purpose before she was in fact repaired, and give the reasons why you did not raise and repair her.

Int. 17. State, from your knowledge of such barges, their construction and repairs, whether said barge could by any amount of repairs have been put in as good condition as she was before the collision.

Int. 18. State, from your knowledge of such matters, what effect it would have had on said barge to have attempted to raise her, as she lay in the water, between Apr. 23 and July 24, 1871, in her disabled and injured condition, and whether or not she could have been repaired before the water fell sufficiently to let her, or large part of her, rest on dry ground.

519 Int. 19. State, if you knew, what the value of the use of said barge (as she was before collision) and similar barges was per day between April 23 and September 1, 1871, on the Miss. River, between St. Louis and S. Paul.

J. HAM. DAVIDSON,
HOWELL & RICE,
Atty's for Pl'ff.

I hereby appoint Andrew Brown special dep. United States marshal to serve this writ.

PETER MELENDY,
United States Marshal.

KEOKUK, *July* 24, 1872.

520 The within notice, and the inter'ogatories attached, came into my hands on the 24th day of July, 1872, and I served the same on the within-named Samuel Atlee personally, by reading the same to him personally, and by delivering a true copy apart w'tten, and interrogatories to him personally, in the city of F't Madison, Le' County, Iowa, on the said 24th day of July, 1872.

By PETER MELENDY,
U. S. M.,
By ANDREW BROWN,
Special Dep'ty U. S. M.

JULY 25, 1872.

STATE OF IOWA, *Lee County, ss:*

I, Andrew Brown, being duly sworn, state that I am the person who made the foregoing service and return, and that the statements contained in said return are true.

ANDREW BROWN.

Subscribed and sworn to before me this 26th da' of July, 1872.
[NOTARIAL SEAL.] A. L. TALCOMB,
Notary Public.

521 Servis of 'rit, $2.00; copy, $1.00. $3.00.
(Endorsed:) Northwestern Union Packet Co. vs. Samuel Atlee.

Depositions of witnesses produced, sworn, and examined at the office of Duncan & Woodward, 217 North Third street, in the city of St. Louis, in the county of St. Louis and State of Missouri, before me,

property, if any, on said barge by her sinking on said trip, and the amount of the injury, and give particulars.

Ques. 16. Examine any written entry you may have made
515 in the books of the company (pl't'ff) in regard to the loss of said cargo, property, or freight, or injury to said cargo and property, and attach copies of same to your deposition, with any vouchers you may have showing amount of same.

Ques. 17. State any other loss you may know that pl'ff sustained by reason of sinking of said barge.

J. HAM. DAVIDSON &
HOWELL & RICE,
Att'ys f' Pl'ff't.

Interrogations to be propounded to G. W. Duncan:

Int. 1. State your name, age, and place of residence.

Int. 2. Do you know the parties to this suit?

Int. 3. State what your occupation was during the spring of 1871.

Int. 4. State whether you knew the barge Jack Reaney; and, if so, when and where you first saw her.

Int. 5. State what, if anything, you know about the sinking of said barge, in spring of 1871, near the town of F't Madison, Iowa.

516 Int. 6. State whether you saw her shortly before the collision by which she was sunk; if so, give a description of her and of her condition.

Int. 7. If you state you so saw her, give a description of her cargo-box, inside floor and lining, hog-chain, and how they were constructed, and whether in good order and condition.

Int. 8. State, if you know, what was her condition as to sea-worthiness before said collision.

Int. 9. Give description of said barge as she was after said collision, and state what injuries, if any, she had received from said collision; particularly in regard to her cargo-box, inside floor and lining, and hog-chain, and side and bottom, and how they were injured, if they were injured.

Int. 10. State what became of her cargo-box, inside lining and floor, and hog-chain, and whether they were replaced or not.

Int. 11. Besides the parts of said barge which were repaired, state what other parts were injured, if any.

517 Int. 12. If you state that said barge was weakened, sp'ung, and twisted out of shape by said collision, state, from your knowledge of such barges, their construction and repairs, whether they could have been made as good, strong, staunch, sea-worthy, and reliable after the collision as she was before.

Int. 13. If you state that she could not, then state the difference between the value of said barge as she was before the collision and what her value would have been after the collision if she had been as fully repaired as she could have been, and had had her cargo-box, inside floor and lining, and hog-chain, &c., replaced.

Int. 14. State the difference in her value before the collision and her value as she was after the repairs were put upon her, her cargo-box, inside floor and dun'ing, hog-chain, &c., being gone and not replaced.

Int. 15 State, if you can, the stage of water at Fo't Madison, and whether high or low, from April 23, 1871, to July 24, 1871; and
518 state whether or not said barge could have been raised in the water she was then lying in, and repaired during that time by being bulkheaded or otherwise.

Int. 16. State what efforts, if any, you made to raise and repair said barge, and what steps were taken and what preparations made for that purpose before she was in fact repaired, and give the reasons why you did not raise and repair her.

Int. 17. State, from your knowledge of such barges, their construction and repairs, whether said barge could by any amount of repairs have been put in as good condition as she was before the collision.

Int. 18. State, from your knowledge of such matters, what effect it would have had on said barge to have attempted to raise her, as she lay in the water, between Apr. 23 and July 24, 1871, in her disabled and injured condition, and whether or not she could have been repaired before the water fell sufficiently to let her, or large part of her, rest on dry ground.

Int. 19. State, if you knew, what the value of the use of said
519 barge (as she was before collision) and similar barges was per day between April 23 and September 1, 1871, on the Miss. River, between St. Louis and S. Paul.

J. HAM. DAVIDSON,
HOWELL & RICE,
Atty's for Pl'ff.

I hereby appoint Andrew Brown special dep. United States marshal to serve this writ.

PETER MELENDY,
United States Marshal.

KEOKUK, *July* 24, 1872.

520 The within notice, and the inter'ogatories attached, came into my hands on the 24th day of July, 1872, and I served the same on the within-named Samuel Atlee personally, by reading the same to him personally, and by delivering a true copy apart w'tten, and interrogatories to him personally, in the city of F't Madison, Le' County, Iowa, on the said 24th day of July, 1872.

By PETER MELENDY,
U. S. M.,
By ANDREW BROWN,
Special Dep'ty U. S. M.

JULY 25, 1872.

STATE OF IOWA, *Lee County, ss:*

I, Andrew Brown, being duly sworn, state that I am the person who made the foregoing service and return, and that the statements contained in said return are true.

ANDREW BROWN.

Subscribed and sworn to before me this 26th da' of July, 1872.
[NOTARIAL SEAL.] A. L. TALCOMB,
Notary Public.

521 Servis of 'rit, $2.00; copy, $1.00. $3.00.
(Endorsed:) Northwestern Union Packet Co. vs. Samuel Atlee.

Depositions of witnesses produced, sworn, and examined at the office of Duncan & Woodward, 217 North Third street, in the city of St. Louis, in the county of St. Louis and State of Missouri, before me,

property, if any, on said barge by her sinking on said trip, and the amount of the injury, and give particulars.

Ques. 16. Examine any written entry you may have made
515 in the books of the company (pl't'ff) in regard to the loss of said cargo, property, or freight, or injury to said cargo and property, and attach copies of same to your deposition, with any vouchers you may have showing amount of same.

Ques. 17. State any other loss you may know that pl'ff sustained by reason of sinking of said barge.

J. HAM. DAVIDSON &
HOWELL & RICE,
Att'ys f' Pl'ff't.

Interrogations to be propounded to G. W. Duncan:

Int. 1. State your name, age, and place of residence.

Int. 2. Do you know the parties to this suit?

Int. 3. State what your occupation was during the spring of 1871.

Int. 4. State whether you knew the barge Jack Reaney; and, if so, when and where you first saw her.

Int. 5. State what, if anything, you know about the sinking of said barge, in spring of 1871, near the town of F't Madison, Iowa.

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Int. 8. State, if you know, what was her condition as to sea-worthiness before said collision.

Int. 9. Give description of said barge as she was after said collision, and state what injuries, if any, she had received from said collision; particularly in regard to her cargo-box, inside floor and lining, and hog-chain, and side and bottom, and how they were injured, if they were injured.

Int. 10. State what became of her cargo-box, inside lining and floor, and hog-chain, and whether they were replaced or not.

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J. HAM. DAVIDSON,
HOWELL & RICE,
Atty's for Pl'ff.

I hereby appoint Andrew Brown special dep. United States marshal to serve this writ.

PETER MELENDY,
United States Marshal.

KEOKUK, *July* 24, 1872.

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By PETER MELENDY,
U. S. M.,
By ANDREW BROWN,
Special Dep'ty U. S. M.

JULY 25, 1872.

STATE OF IOWA, *Lee County, ss:*

I, Andrew Brown, being duly sworn, state that I am the person who made the foregoing service and return, and that the statements contained in said return are true.

ANDREW BROWN.

Subscribed and sworn to before me this 26th da' of July, 1872.
[NOTARIAL SEAL.] A. L. TALCOMB,
Notary Public.

521 Servis of 'rit, $2.00; copy, $1.00. $3.00.
(Endorsed:) Northwestern Union Packet Co. vs. Samuel Atlee.

Depositions of witnesses produced, sworn, and examined at the office of Duncan & Woodward, 217 North Third street, in the city of St. Louis, in the county of St. Louis and State of Missouri, before me,

David D. Duncan, a notary public within and for said county and State, in a certain case now pending in the district court of the United States for the district of Iowa, at Keokuk, between the Northwestern Union Packet Company, libellant, and Samuel Atlee, respondent, on the part of the libellant.

William Redpath, of lawful age, being produced, sworn, and
522 examined on the part of the libellant, deposeth and saith:

1. State your name, age, & place of residence.

Ans. My name is William Redpath; age forty-two years; place of residence in the city of St. Louis.

2. Do you know the parties to this suit?

Ans. I know the plaintiff, but not Mr. Atlee.

3. State in whose employ you were, and in what business engaged, on or about April 23, 1871, and in whose employ you now are, and in what business engaged.

Ans. I was in the employ of the Northern Line Packet Company at that time, as a delivery-clerk. I am still in the same position with the same company.

4. State what knowledge, if any, you had of the barge Jack Reany, on or prior to April 23, 1871.

Ans. I first saw the Jack Reaney in 1869 or 1870. I saw her frequently until she sank.

523 5. State what, if anything, you know of the sinking of the said barge on or about April 23, 1871, near the town of F't Madison, Iowa, while in tow of the steamboat Phil Sheridan, on a trip from St. Paul to St. Louis.

Ans. I do not know anything about how she sank or what was the cause of it.

6. State, if you know, to whom said boat and said barge belonged at the time.

Ans. They belonged, as I believe, to the Northwestern Union Packet Company.

7. If you state that you knew said barge, state what the value of the use of said barge would have been per day from April 23, 1871, to Sept. 1st, 1871, if she had been in the same condition she was in before she sunk.

Ans. I cannot say; I don't know.

8. State the value of the use per day of similar barges, between said dates, on the Upper Mississippi River, between St. Paul & St. Louis.

Ans. I do not know it.

524 9. State what, if anything, you know in regard to the amount of freight between said years for shipment on the Miss. River between said dates.

(Question objected to by defendant's counsel as not relevant to the issues in the cause.)

Ans. I do not know anything about the amount of freight.

10. State what, if anything, you may know in regard to there being a demand for the use of this and similar barges on the Miss. River, between St. Paul and St. Louis, between said dates.

(Objected to for same reason as above.)

Ans. I know nothing about it.

11. State, if you know, what cargo and other property, if any, said barge had on board at the time she sunk, to what place it was consigned, the amount of said cargo and of what it consisted, and what part of said cargo and other property, if any, was lost by the sinking of the said barge.

(Question objected to for same reason.)

525 Ans. I do not know.

12. State, if you know, how much freight was lost by the sinking of said barge, and give particulars.

(Question objected to because not relevant nor material.)

Ans. There were thirty-four (34) sacks of wheat damaged; thirty-eight (38) sacks of wheat lost totally; sixty-nine (69) sacks of oats totally lost; forty-one (41) sacks of potatoes totally lost; nine (9) barrels of tallow totally lost; and forty-three (43) pigs of lead totally lost. This includes only what was lost to consignees in St. Louis. I cannot tell anything about what was lost by consignees living between St. Louis & the place where the barge sunk.

13. State, if you know, what the freight of the cargo and other property in said boat and barge, on said trip, amounted to, and to whom said freight belonged, and what amount was lost from the entire freight-list of said barge on that trip by reason of the sinking of said barge.

(Question objected to for same reason as question 12.)

526 Ans. I can testify only as to the freight consigned to St. Louis. The wheat was consigned to Whittaker, Verdin & Gray, W. B. Willer, & H. A. Honezer; the oats to W. L. Humphreys, and Stanard, Baum & Co., of New Orleans; the potatoes to Snebs, Mezers & Fusy; the tallow to Goodwin, Behr & Co.; the lead to Capt. J. M. Mason, for reshipment. I can't say what the freight amounted to.

14. State how much shortage there was, if any, in the amount of freight on the arrival of the Phil Sheridan at St. Louis on that trip, caused by the sinking of said barge, and how you arrive at the result.

(Question excepted to for same reason as question 12.)

Ans. I have already stated the shortage as far as I know. I arrive at it from memoranda made by me at the time the goods were delivered to the several consignees. What I have enumerated was then found to be damaged or missing, as I have stated.

527 15. State what injury, if any, was done to the cargo and other property, if any, on said barge by her sinking on said trip, and the amount of the injury, and give particulars.

(Objected to as not relevant or material.)

Ans. I cannot state more fully than I have already done.

16. Examine any written entry you may have made in the books of the company (pl'ff) in regard to the loss of said cargo, property, or freight, or injury to said cargo and property, and attach copies of same to your deposition, with any vouchers you may have showing amount of same.

(Objected to as not competent to introduce statements from books of plaintiff; the same is secondary evidence.)

Ans. It is not my business to make any entries on the books of the company. I do make private memoranda for my own use & to help my memory. I report all shortage and damages to the collector of

528 the company. I have referred to my book in giving my deposition, particularly in my answers to questions 12 and 13, using it merely to refresh my memory & that I might be accurate. I have made no entries in the books of the company.

17. State any other losses you may know that pl't'ff sustained by reason of sinking of said barge.

(Objected to as not furnishing defendant an opportunity to cross-examine.)

Ans. I know of no other losses of my own knowledge.

Cross-examination:

X 1. Was not said barge Jack Reaney insured; and, if yea, in what insurance company was she insured?

Ans. I do not know.

X 2. Was not the freight on said barge insured; and, if yea, how much was she insured for?

Ans. I do not know.

X 3. How much insurance-money has been received either on
529 account of the injury to the barge Jack Reaney or the freight or cargo on board of her when injured? Give particulars.

Ans. I do not know.

X 4. State your business and occupation, and how long you have been in that business, and for whom you now work.

Ans. I am chief delivery-clerk for the Northern Line Packet Company, and have been for about eight years. I am still in that position.

W'M REDPATH.

Sworn to and subscribed before me this 7th August, 1872.

D. D. DUNCAN,
Notary Public.

Received one dollar witness-fee of D. D. Duncan, notary, Aug. 7, '72

W'M REDPATH.

STATE OF MISSOURI,
County of St. Louis, ss:

I, David D. Duncan, a notary public within & for said county and
530 State, duly commissioned and qualified, do hereby certify that William Redpath, the deponent, whose place of residence is in the city of St. Louis, Missouri, was by me sworn to testify the whole truth of knowledge touching the matter in controversy in the cause aforesaid; that deponent was examined, and his examination reduced to writing by me, who am neither of the parties, nor attorney of either, or in any wise interested in this suit, and, after being by me carefully read over to the said deponent, the same was sworn to and subscribed by the said deponent in my presence on the seventh day of August, A. D. 1872, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, at the city of St. Louis, county of St. Louis, State of Missouri.

Given and certified this seventh day of August, A. D. 1872, under my hand and seal official.

[NOTARIAL SEAL.]

D. D. DUNCAN,
Notary Public S't Louis Co., Mo.

531 WILLIAM T. DAVIDSON, of lawful age, being produced, sworn, and examined on the part of the libellant, deposeth and saith:

1. State your name, age, and place of residence.

Ans. My name is William F. Davidson; age, forty-six years; residence in the city of St. Louis.

2. Do you know the parties to this suit?

Ans. I know the plaintiff, but not Mr. Atlee.

3. State in whose employ you were, and in what business engaged, on or about April 23d, 1871, and in whose employ you now are, and in what business engaged.

Ans. I was then and still am in the employ of the Northwestern Union Packet Company. I am president of that company.

4. State what knowledge, if any, you had of the barge Jack Reaney on or prior to April 23d, 1871.

Ans. I knew the Jack Reaney. She was used by us. I have seen her many times often prior to the time she sank.

532 5. State what, if anything, you know of the sinking of the said barge on or about April 23d, 1871, near the town of F't Madison, Iowa, while in tow of the steamboat Phil Sheridan, on a trip from St. Paul to St. Louis.

Ans. I know *k*nothing about it of my own knowledge, as I was not there at the time.

6. State, if you know, to whom said boat and said barge belonged at the time.

Ans. They belonged to the Northwestern Union Packet Company at the time.

7. If you state that you know said barge, state what the value of the use of said barge would have been per day from April 23d, 1871, to Sept. 1st, 1871, if she had been in the same condition she was in before she sank.

Ans. She was worth ten to fifteen dollars per day during that time and in her condition before she sank.

8. State the value of the use per day of similar barges, between said dates, on the Upper Mississippi River, between St. Paul and St. Louis.

533 Ans. Ten to fifteen dollars per day.

9. State what, if anything, you know in regard to the amount of freight between said places, for shipment on the Miss. River, between said dates.

(Defendant by his counsel objects to this question as not relevant to the issues in the case.)

Ans. The freighting business between those dates & between those points was about what it usually is at that time of the year. There was a fair quantity of freight for shipment.

10. State what, if anything, you may know in regard to there being a demand for the use of this and similar barges on the Miss. River, between St. Paul and St. Louis, between said dates.

(Objected to for same reason.)

Ans. There was a demand for that and similar barges at that time and between those points.

534 11. State, if you know, what cargo and other property, if any, said barge had on board at the time she sunk, to what place it was consigned, the amount of said cargo and of what it consisted, and what part of said cargo and other property, if any, was lost by the sinking of said barge.

(Objected to for same reason.)

Ans. I cannot state of my own knowledge.

12. State, if you know, how much freight was lost by the sinking of said barge, and give particulars.

(Excepted to because not relevant nor material.)

Ans. I cannot state; I don't know.

13. State, if you know, what the freight of the cargo and other property on said boat and barge on said trip amounted to, and to whom said freight belonged, and what amount was lost from the entire freight-list of said barge on that trip by reason of the sinking of said barge.

(Excepted to for same reason as question 12.)

535 Ans. I cannot state of my own knowledge.

14. State how much shortage there was, if any, in the amount

of freight, on the arrival of the Phil Sheridan at St. Louis on that trip, caused by the sinking of said barge, and how you arrive at the result.

(Excepted to for same reason as question 12.)

Ans. I cannot state that, either.

15. State what injury, if any, was done to the cargo and other property, if any, on said barge by her sinking on said trip, and the amount of the injury, and give particulars.

(Question objected to as not relevant or material.)

Ans I cannot do that either; I only know from information derived from other persons.

16. Examine any written entry you may have made in the books of the company (pl'ff) in regard to the loss of said cargo, property, or freight, or injury to said cargo and property, and attach copies of
536 same to your deposition, with any vouchers you may have showing amount of same.

(Objected to as not competent to introduce statements from books of pl'ff; the same is secondary evidence.)

Ans. I have made no entries on the books of the company, and have no vouchers.

17. State any other losses you may know that pl't'ff sustained by reason of sinking of said barge.

(Objected to as not furnishing def't an opportunity to cross-examine.)

Ans. It sustained a loss on the barge itself; a loss of the time of the steamer Phil Sheridan. I sent a boat there to raise the barge; that was also a loss to us. All this besides *besides* the loss on the freight & the use of the barge.

Cross-examination:

X 1. Was not said barge Jack Reaney insured; and, if yea, in which insurance company was the insurance?

Ans. She was not insured.

537 X 2. Was not the freight on said barge insured; and, if yea, how much was she insured for?

Ans. The freight to which the boat was entitled was not insured.

X 3. How much insurance-money has been received, either on account of the injury to the barge Jack Reaney or the freight or cargo on board her when injured. Give particulars.

Ans. Nothing has been received by our company, nor by me, for insurance.

X 4. State your business and avocation, and how long you have been in that business, and for whom you now work.

Ans. I am president of the Northwestern Union Packet Company; have been since 1866.

W'M F. DAVIDSON.

Sworn to and subscribed before me this 13th day of August, 1872.

[NOTARIAL SEAL.] D. D. DUNCAN,
Notary Public, St. Louis Co., Mo.

538 STATE OF MISSOURI,
County of St. Louis, ss:

I, David D. Duncan, a notary public within and for the county and State aforesaid, do hereby certify that William F. Davidson, the deponent, whose place of residence is in the city of St. Louis, Missouri, was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid; that deponent was exam-

ined and his examination reduced to writing by me, who am neither of the parties, nor attorney of either, or in any wise interested in the suit; and after being carefully by me read over to the said deponent, the same was sworn to and subscribed by the said deponent in my presence on the thirteenth day of August, A. D. 1872, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, at St. Louis, county of St. Louis and State of Missouri.

539 Given and certified under my hand and official seal this 13th day of August, A. D. 1872.

[NOTARIAL SEAL.]

D. D. DUNCAN,
Notary Public, St. Louis Co., Mo.

STATE OF MISSOURI,
County of St. Louis, ss:

I, David D. Duncan, notary public in and for the county and State aforesaid, hereby certify that on the seventh day of August, A. D. 1872, there came before me, at my office in the city of St. Louis in said county and State, William Redpath, and that on the thirteenth day of August, A. D. 1872, there came before me, at said place, William F. Davidson; that they having been by me sworn according to law, I then and there proceeded to take their depositions in accordance with the commission and interrogatories hereto attached, as issued from the clerk's

540 office of the district court of the United States for the district of Iowa, at Keokuk; where and at which times said depositions were by me, respectively, reduced to writing in the order in which they stand in the foregoing pages; that said depositions, after having been written down, were by me read over to the said deponents, respectively, and by them, respectively, duly subscribed and sworn to before me and in my presence on the days and year and at the place aforesaid.

And I further certify that there were present at said times neither plaintiff nor defendant, nor the attorney of either of them, and that the deposition of each deponent was taken separate and apart from the other, and that the averments, &c., as in said depositions contained are true and correct.

In testimony whereof I have hereunto set my hand and affixed my seal notarial on this 13th day of August, A. D. 1872.

[NOTARIAL SEAL.]

D. D. DUNCAN,
Notary Public, St. Louis Co., Mo.

541 Fees of notary for taking depositions, 20 pages, $10.00, three certificates & seal, $3.00; witness fee, (W. Redpath, as above,) $1.00. Total, $14.00. Paid by libellant.

D. D. DUNCAN, *N. P.*

(Endorsed:) District court of the United States for the district of Iowa. Northwestern Union Packet Company vs. Samuel Atlee. Depositions for libellant. Opened by agreement of parties, & filed this 15th day of August, A. D. 1872. H. K. Love, cl'k. By Erie J. Leech, dep. Filed Oct. 10, 1872. George B. Corkhill, clerk. Notary & witness fees, $14.00. Paid by libellant. D. D. Duncan, N. P.

542 United States district court, district of Iowa.

NORTHWESTERN UNION PACKET CO., LIBELLANT,
SAMUEL ATLEE, RESPONDENT.

Stipulation.

It is hereby agreed that libellant in above-name' case may take the depositions of W'm F. Davidson and William Rhodes before D. D. Duncan or some other notary public in & for St. Louis County, at St. Louis, Missouri, upon the annexed direct interrogatories and such cross-interrogatories as att'ys for said respondent may deliver to att'ys for said libellant within five days from date hereof, and the issuance of a commission is expressly waived.

(Signed) HOWELL & RICE, *Att'y for Libellant.*
Jan'y 24, 1872.

McCRARY, MILLER & McCRARY,
Att'ys for Def't.

No cross questions.
(Signed) McCRARY, MILLER & McCRARY,

543 Direct interrogatories.

1. State your age, place of residence, and occupation.
2. How long have you been in such steamboating business, and how long have you been such officer of the libellant?
3. State if you have any personal knowledge of the barge Jack Reaney; and, if so, what.
4. State if you know what kind of a barge she was, and state what was her condition in April, 1871, fully and particularly.
5. To whom did she then belong, and for what purpose was she used?
6. State what knowledge, if any, you have of the kind and character of barges used upon the Upper Mississippi River, and the extent of your knowledge touching such barges.
7. What dealings or transactions, if any, have you had, *if any*,
544 in *in* barges on the Upper Mississippi River?
8. Now, from your knowledge of the character, capacity, and condition of the barge Jack Reaney, and from your knowledge of barges generally, please state what said barge Jack Reaney was worth just prior to the time of her wreck at Fort Madison.
9. State what was her condition, and what was her value after said accident.
10. What was done with her after she was wrecked?
11. If, in answer to the last question, you say she was sold by libellant, state to whom she was sold and for how much, and why for such sums.
12. Where was she and what was her condition when she was sold?
13. State any other matter or thing you may now think of interest bearing upon the issues in this suit.

HOWELL & RICE, *Att'y'.*

545 Depositions of witnesses produced, sworn, and examined at St. Louis, in the county of St. Louis and State of Missouri, before me, David D. Duncan, a notary public within and for said county and State, in a certain cause now pending in the United States district court for the district of Iowa, between Northwestern Union Packet Company, libellant, and Samuel Atlee, respondent, on the part of the libellant.

WILLIAM F. DAVIDSON, of lawful age, being produced, sworn, and examined on the part of the libellant, deposeth and saith:

1. To the first interrogatory the witness answers: My age is nearly forty-seven years. I reside in St. Louis, Mo. My occupation is steamboating. I am president of the Northwestern Union Packet Company.

2. To the second interrogatory the witness answers: I have
546 been steamboating about thirty years, and have been the president of the N. W. Packet Company since its foundation, about six (6) years.

3. To the third interrogatory the witness answers: I have had personal knowledge of the barge Jack Reaney; she was built for our company about three years ago, and has belonged to us ever since, until sold after her wreck.

4. To the fourth interrogatory the witness answers: She was what we call a bulk-grain barge, class number one, and before the accident, when she went in tow of steamer Phil Sheridan, was in good order. This was, I think, in April, 1871. All barges in class number one are good barges and in the best condition.

5. To the fifth interrogatory the witness answers: She then be-
547 longed to the Northwestern Union Packet Company, and was used generally to carry bulk-grain. In April, 1871, she was in tow of the Phil Sheridan, and traded with miscellaneous merchandise.

6. To the sixth*e* interrogatory the witness answers: I have had knowledge of the kind and character of barges used on the Upper Mississippi River for a long time. They are what we call model barges, and some of them are constructed to carry bulk-grain. This barge was lined inside, and had on a cargo-box for the protection of bulk-grain; was a substantial barge in every particular.

7. To the seventh interrogatory the witness answers: As president of the N. W. Union Packet Co., I have constructed, bough', sold, and used in the transportation business at least one hundred and fifty (150) Upper Mississippi River barges.

548 8. To the eighth interrogatory the witness answers: I consider the Jack Reaney worth, just prior to the wreck at Fort Madison, thirty-five hundred dollars, ($3,500.00.)

9. To the ninth interrogatory the witness answers: She was badly wrecked.

10. To the tenth interrogatory the witness answers: We sold her.

11. To the eleventh interrogatory the witness answers: She was sold to W. W. Kinnear for one hundred and fifty dollars, ($150.) This sum was all we could get for her, and was all we were offered for her.

12. To the twelfth interrogatory the witness answers: When sold she was as the town of Fort Madison, Iowa, part in the river and part on the bank, and was in a badly wrecked condition.

549 13. To the thirteenth interrogatory the witness answers: I know of nothing else of interest to the issues to this suit.

W'M F. DAVIDSON.

STATE OF MISSOURI,
County of St. Louis, ss:

I, David D. Duncan, a notary public within and for said county and State, do hereby certify that William F. Davidson, whose place of residence is in the city of St. Louis, Mo., was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid; that deponent was examined and his examination reduced to writing by me, who am neither of the parties,

nor attorney of either, or in any wise interested in the suit, and after being carefully by me read over to said deponent, the same was sworn to and subscribed by the said deponent in my presence on
550 the first (1st) day of February, A. D. 1872, between the hours of eleven o'clock a. m. and one o'clock p. m. of said day, at my office, No. 211 North Third street, in the city and county of St. Louis, in the State of Missouri.

Given and certified to this 1st day of February, A. D. 1872, under my hand and seal official.

[NOTARIAL SEAL.]

D. D. DUNCAN,
Notary Public, St. Louis Co., Mo.

551 WILLIAM RHODES, of lawful age, being produce', sworn, and examined on the part of the libellant, deposeth and saith:

1. To the first interrogatory the witness deposes and says: My age is forty-seven years; place of residence temporarily in St. Louis, Mo.; occupation, secretary of the Northwestern Union Packet Company.

2. To the second interrogatory the witness answers: I have been steamboating about sixteen (16) years and an officer of the company about six (6) years.

3. To the third interrogatory the witness answers: I have personal knowledge of the barge Jack Reaney; she was built for our company about three years ago.

4. To the fourth interrogatory the witness answers: She was what we call a model barge, used principally for carrying-bulk grain. In
552 April, 1871, her condition was, as far as I knew, good.

5. To the fifth interrogatory the witness answers: She then belonged to the Northwestern Union Packet Company, and was used generally in carrying bulk-wheat. At this time she was carrying miscellaneous freight.

6. To the sixthe interrogatory the witness answers: They are mostly model barges & used for carrying bulk-grain and miscellaneous freight. I have had knowledge of such barges for twelve years.

7. To the seventh interrogatory the witness answers: My de'lings with the Upper Mississippi River barges are principally in paying for them as an officer of our company.

8. To the eighth interrogatory the witness answers: My opinion is that the Jack Reaney was worth thirty-five hundred dollars (3,500) just prior to her wreck.

553 9. To the ninth interrogatory the witness answers: I never saw her after the accident, and cannot say what her condition was.

10. To the tenth interrogatory the witness answers: She was sold.

11. To the eleventh interrogatory the witness answers: To W. W. Kinnear, for one hundred and fifty dollars, ($150;) we made an effort to sell her without being able to get a purchaser for her in her wrecked condition, and it was thought advisable to take the one hundred and fifty dollars rather than to repair her.

12. To the twelfth interrogatory the witness answers: I do not know of my own knowledge.

13. To the thirteenth interrogatory the witness answers: I know of nothing further of interest bearing upon the issue in this suit.

WILLIAM RHODES.

554 STATE OF MISSOURI,
County of St. Louis, ss:

I, David D. Duncan, a notary public within and for said county and State, do hereby certify that William Rhodes, whose place of residence is temporarily in the city of St. Louis, Mo., was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid; that deponent was examined, and his examination reduced to writing, by me, who am neither of the parties, nor attorney of either, or in anywise interested in the suit, and after being carefully by me read over to said deponent, the same was swo'n to and subscribed by the said deponent in my presence on the first (1st) day of February, A. D. 1872, between the hours of eleven o'clock a. m. and three o'clock p. m. of said day, at my office, No. 211 North Third street,
in the city and county of St. Louis, State of Missouri.

555 Given and certified to under my hand and official seal this first day of February, A. D. 1872.

[NOTARIAL SEAL.] D. D. DUNCAN,
Notary Public, St. Louis Co., Mo.

STATE OF MISSOURI,
County of St. Louis, ss:

I, David D. Duncan, a notary public within and for said county and State aforesaid, do certify that, in pursuance of the annexed stipulation, came before me at my office, No. 211 North Third street, in the city and county of St. Louis, Mo., William F. Davidson and William Rhodes, who were by me sworn and examined, and such examination reduced to writing by me, who am neither of the parties, their attorney, nor in any wise interested in the event of the suit, and, after being by me read over to each of said deponent', the same was sworn to and sub-
556 scribed by said witnesses respectively in my presence, and their depositions are now herewith returned; and I further certify that neither of the parties to said suit were present, either personally or by agent or attorney, except as the witnesses were officers of the libellant.

Given under my hand and seal official, hereto affixed at my office, in the city and county of St. Louis, State of Missouri, this 1st day of February, A. D. 1872.

[SEAL OF CO. COURT.] D. D. DUNCAN,
Notary Public, St. Louis Co., Mo.

STATE OF MISSOURI,
County of St. Louis, ss:

I, Frederick C. Schoenthaler, clerk of the county court of St. Louis County, certify that D. D. Duncan, whose name is subscribed to the foregoing certificate February 1st, 1872, was on said date an acting notary public in and for said county, duly commissioned and quali-
557 fied and authorised to take depositions; that the signature thereto is genuine; and that to all such his official acts full faith and credit are and ought to be given.

In testimony whereof I hereto set my hand and affix the seal of said court, at office, in the city of St. Louis, this first day of February, eighteen hundred and seventy-two.

[SEAL OF CO. COURT.] F. C. SCHOENTHALER, *Clerk.*

(Endorsed:) D. U. S. dist. cou't, Iowa. Northwestern Union Packet Company vs. Samuel Atlee, W. F. Davidson, and Rhodes. Depositions for libellant. Opened by agreement of parties & filed Feb'y 8, 1872. H.

K. Love, clerk, by Erie J. Leech, dep. Filed Oct. 10, 1872. George B. Corkhill, clerk. Fees of notary, $12.50. Paid by libellant. D. D. Duncan, n. p.

558 *Stipulation.*

United States district court, district of Iowa.

NORTHWESTERN UNION PACKET CO. *vs.* SAMUEL ATLEE. } 10.

It is hereby agreed the libellant in the above-named suit may take the deposition of W. W. Kinnear before any notary public, or U. S. commissioner, at either of the following-named places where said witness may be found, to wit, Cairo, Illinois; St. Louis, Mo.; or La Crosse, Wisconsin, upon the annexed direct interrogatories, and such cross-interrogatories as att'y for Samuel Atlee, respondent, may deliver to att'y for said libellant within five days from date hereof, and the issuance of a commission is expressly waived.

Jan'y 24, 1672.

HOWELL & RICE,
Att'ys for Libellant.
McCRA'Y, MILLER & McCRA'Y,
Att'ys for Def't.

No cross-questions.

McCRA'Y, MILLER & McCRAR'Y.

559 Direct interrogatories.

1. State your age, place of residence, and occupation.
2. If, in answer to the above question, you have said in substance that you are a ship-carpenter, state how long you have been engaged in such business.
3. State what means of information, if any, you have of knowing the prices and value of barges on the Upper Mississippi River.
4. State whether you have any personal knowledge of the barge Jack Reaney, and of her having been wrecked at Ft. Madison, Iowa.
5. If, in answer to the last foregoing interrogatory, you have in substance stated that you had a personal knowledge of the barge Jack Reaney, state what was her condition and her value both (shortly) prior to the time she was wrecked at Fort Madison and what was her value in her wrecked condition after the accident.

HOWELL & RICE,
Atty's for Libellant.

560 Deposition of a witness produced, sworn, and examined at St. Louis, in the county of St. Louis and State of Missouri, before me, David D. Duncan, a notary public within and for the county of St. Louis, Mo., in a certain cause now pending in the United States district court for the district of Iowa, between Northwestern Union Packet Company, libellants, and Samuel Atlee, respondent, on the part of the libellants.

WILLIAM W. KINNEAR, of lawful age, being produced, sworn, and examined on the part of the libellant, deposeth and saith:

1. To the first interrogatories the witness answers: My age is thirty-six years. Place of residence, La Crosse, Wisconsin. My occupation, agent of the Northwestern Union Packet Company, a steamboatman. I am also a ship-carpenter.

2. To the second interrogatories the witness answers: I have been in the ship-carpentering business about eight (8) years.

561 3. To the third interrogatory the witness answers: My means of information about the value of such barges are from my experience with them, having had charge of their repairs, and being otherwise connected with business about there.

4. To the fourth interrogatory the witness answers: I have had personal knowledge of the barge Jack Reaney, and of her having been wrecked at Fort Madison, Iowa.

5. To the fifth interrogatory the witness answers: I considered the Jack Reaney in good condition previous to the wreck, and that she was then worth thirty-five hundred dollars, ($3,500.) I think she was worth after the accident and in her wrecked condition, about one hundred and fifty dollars ($150.)

W. W. KINNEAR.

562 STATE OF MISSOURI,
County of St Louis, ss:

I, David D. Duncan, a notary public within and for said county and State, do hereby certify that William W. Kinnear, the deponent, whose place of residence is in La Crosse, Wisconsin, was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid; that deponent was examined, and his examination reduced to writing by me, who am neither of the parties nor attorney of either, or in any wise interested in the suit, and after being carefully by me read over to the said deponent, the same was sworn to and subscribed by the said deponent in my presence on the first (1st) day of Febuary, A. D. 1872, between the hours of eleven o'clock in the forenoon and four o'clock in the afternoon of said day, at my office, No. 211 North Third street, in the city and county of St. Louis, State of Missouri.

Given and certified to under my hand and seal official this first day of February, A. D. 1872.

[NOTARIAL SEAL.]

D. D. DUNCAN,
Notary Public, St. Louis Co., Mo.

563 STATE OF MISSOURI,
County of St. Louis, ss:

I, David D. Duncan, a notary public within and for said county and State, do certify that in pursuance of the annexed stipulation, came before me at my office, No. 211 North Third st., in the city of St. Louis, county and State aforesaid, William W. Kinnear, who was by me sworn and examined, and such examination reduced to writing by me, who am neither of the parties, their attorney, nor in any wise interested in the event of the suit, and after being by me read over to the said deponent the same was sworn to and subscribed by said witness in my presence, and his deposition is now herewith returned, and I further certify that the president and secretary of the libellant were present in person, and no others.

Given under my hand and seal official, hereto affixed, at my office in

the city and county of St. Louis, State of Missouri, this first day of Feb'y, A. D. 1872.

[NOTARIAL SEAL.] D. D. DUNCAN,
Notary Public, St. Louis Co, Mo.

564 STATE OF MISSOURI,
County of St. Louis, ss:

I, Frederick C. Schoenthaler, clerk of the county court of St. Louis County, certify that D. D. Duncan, whose name is subscribed to the foregoing certificate, dated February 1st, 1872, was on said date an acting notary public in and for said county, duly commissioned and qualified and authorized to take depositions; that the signature thereto is genuine, as I believe, and that to all such his official acts full faith and credit are and ought to be given.

In testimony whereof, I hereto set my hand and affix the seal of said court at office, in the city of St. Louis, this first day of February, eighteen hundred and seventy-two.

[COUNTY COURT SEAL.] F. C. SCHOENTHALER, *Clerk.*

(Endorsed:) C. U. S. Dist. C't, Iowa. Northwestern Union Packet Company vs. Samuel Atlee. W. W. Kinnear. Deposition for libellant. Opened by agreement & filed Feb'y 8, 1872. H. K. Love, clerk. By Erie J. Leech, dep. Filed Oct. 10, 1872. George B. Corkhill, clerk. Fees of notary, $7.50. Paid by libellant. D. D. Duncan, N. P.

565 Dist. court of the United States for dist. of Iowa.

NORTHWESTERN UNION PACKET CO.
vs.
SAM'L ATLEE.

The deposition of W'm H. Barnes, taken in this case and filed Sept. 16, 1872, shall be received and admitted in evidence in said case subject to exceptions & incompetency, and all informalities in taking said deposition are hereby waived.

Sept. 16, 1872.

McCRARY, MILLER, & J. McCRARY,
For De'fts.

(Endorsed:) N. W. Union Packet Co. vs. Sam'l Atlee. Filed Sept. 16, 1872. H. K. Love, clerk, by E. J. Leech, dep.

566 Cross-questions to W'm H. Barnes on the part of respondent:

Question 1. If in your answer to libellant's questions you shall say that you saw the colliding of the Reaney against the pier, will you state whether the barge and steamer towing her did not, coming down the river, cross the gravel-bar at the mouth of the creek a couple of hundred yards above the pier?

Qu. 2. Did not the steamer and barge keep close to the Iowa shoore before the barge struck the pier?

Qu. 3. If you say there was any cargo on the barge when it collided

with the pier, state if the cargo was on the top of the barge, or in the cargo-box of the barge, or where.

Qu. 4. Name each item of cargo or property on or in the barge when it collided.

Qu. 5. State the name or names of the owners of each article of cargo or property lost or injured by the colliding of the barge on the pier.

Qu. 6 Was or was not said cargo or some portions covered by
567 insurance? and, if yea, state what you know of such insurance.

Qu. 7. Has any insurance-money been collected or received on account of any such cargo, or the freight? If *you*, state how much.

McCRARY, MILLER AND McCRARY,
& P. F. LOMAX,
Att'ys for Respondent.

Respondent objects to the ninth question of libellant, because it is too general and uncertain.

Respondent objects to the 10th question of libellant, because it aims to prove the loss of freightage on the Phil. Sheridan, which is immaterial and irrelevant; and it seeks to prove that the shortage on the Sheridan was caused by the injury of the Reaney, which is irrelevant and argumentative.

Sept. 1st, 1872.

McCRAY, MILLER & McCRA'Y,
and P. F. LOMAX,
Atty's for Respondent.

568 In the district court of the United States for the district of Iowa, at Keokuk, in admiralty.

NORTHWESTERN UNION PACKET COMPANY, libellant,
vs.
SAMUEL ATLEE, RESPONDENT.

It is hereby agreed that the libellant in the above-named suit may take the deposition of W'm H. Barnes at La Crosse, Wisconsin, before any notary public, upon the annexed interrogatories and cross-interrogatories. Said depositions to be used on the trial of said cause on behalf of libellant, and further notice and commission is waived.

HOWELL & RICE,
Atty's for Libellant.
McCRARY, MILLER & McCRARY,
Atty's for Respondent.

AUG. 31, 1872.
SEPT. 1, 1872.

569 Interrogatories to be propounded to W'm H. Barnes.

Int. 1. State your name, age, and place of residence.

Int. 2. Do you know the parties to this suit?

Int. 3. State in whose employ you were and in what business engaged on or about April 23, 1871?

Int. 4. State what, if anything, you know of the sinking of the barge Jack Reaney on or about April 23, 1871, below the town of F't Madison, Iowa, while in tow of the steamboat Phil Sheridan, on a trip from S't Paul to S't Louis.

Int. 5. State what cargo and other property, if any, said barge had on board at the time she sunk, and to what places it was consigned.

Int. 6. State what part of said cargo was lost, if any, by the sinking of said barge. Describe what was lost.

Int. 7. State what part of said cargo was damaged or injured by the sinking of barge, and the extent of said injury, and how much damaged or injured, in dollars and cents.

570 Int. 8. State what was the value of each part of said cargo that was lost, in dollars and cents, as near as you can.

Int. 9. State, if you know, how much freight-money was lost by reason of the sinking of said barge? and give particulars.

Int. 10. State, if you know, how much shortage there was, if any, in the amount of freight on the arrival of the Phil Sheridan at S't Louis on that trip, caused by the sinking of said barge.

HOWELL & RICE,
Atty's for Libellant.

571 Deposition of William H. Barnes, a witness, produced, sworn, and examined on the twelfth day of September, A. D. 1872, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, at the office of Cameron & Lacey, in the city of La Crosse, in the county of La Crosse and State of Wisconsin, before me, Anges Cameron, a notary public for the State of Wisconsin, residing in said county of La Crosse, pursuant to the annexed stipulation in a certain cause now pending and at issue in the district court of the United States for the district of Iowa, in admiralty, wherein the Northwestern Union Packet Company is libellant, and Samuel Atlee is respondent, on the part of said libellant.

WILLIAM H. BARNES, of lawful age, being produced, sworn, and examined on the part of the libellant, deposeth and saith.

572 Answer to first interrogatory: My name is William H. Barnes. My age is thirty years; and I reside at Albaney, Whiteside County, Illinois.

Answer to second interrogatory: Know the Northwestern Union Packet Company, but do not know Atlee.

Answer to third interrogatory. I was in the employ of the Northwestern Union Packet Company, in the capacity of second clerk, on the steamboat Phil Sheridan.

Answer to fourth interrogatory: On the night of the twenty-third of April, A. D. 1871, the barge Jack Reaney was in tow of the steamboat Phil Sheridan, on the starboard side, and we were proceeding from St. Paul to St. Louis. Just below Fort Madison, Iowa, the said barge collided with a pier in the Mississippi River and sunk. I was in bed and asleep at the time of the collision, and was awakened by the crash,

573 and on coming out of my state-room, which I did at once, I learned that the barge had struck a mill-pier. I at once ran down to the barge, and commenced assisting to remove freight off the deck of the barge on the steamer, but the barge sunk in a very few moments; she was badly torn to pieces, and we could not save her, nor prevent her from sinking where she did.

Answer to fifth interrogatory: I cannot state all the cargo that was on the barge, when she sunk, because we had been lighting the boat out, preparatory to going over the rapids. In lighting we did not then, nor is it the custom light off whole lots, but to take freight from all parts of the boat so as to get her in condition to go over the rapids.

Answer to sixth interrogatory: The following portions of the
574 cargo were lost by the sinking of the said barge, viz: 45 sacks of barley, 38 sacks of wheat, 69 sacks of oats, 41 sacks of potatoes, 43 pigs of lead, 9 bbls. of tallow.

Answer to seventh interrogatory: 34 sacks of wheat were damaged by the sinking of said barge. This wheat got thoroughly wet, was pulled out of the river, and could be sold for but little. It was sold for chicken-feed. Wheat at that time and place was worth $1.30 a bushel. Each sack of wheat contained, or was estimated to contain, two bushels. The wheat contained in the thirty-four sacks that were damaged was not worth to exceed twenty-five cents a bushel after being damaged.

Answer to the eighth interrogatory: The value of that portion
575 of the cargo lost by the sinking of said barge was as follows, viz:

45 sacks of barley, containing 90 bushels, worth $1.00					$90 00
38 sacks of wheat, containing 76 bushels, worth 1.30					98 80
69 sacks of oats	"	388	"	" 45	174 60
41 sacks of potatoes	"	82	"	" 75	61 50
43 pigs of lead	"	3,096	pounds	" 08	247 68
9 barrels of tallow	"	2,700	"	" 08	216 00
Total value of the part of cargo destroyed					$888 58

The oats were in what are called "burlap sacks," which sacks are estimated to contain 4½ bushels each.

The property lost by the sinking of the barge, at the time and place it was so lost, was of the value hereinafter stated, that is to say:

Barley, $1.00 per bushel.
Oats, 45 per bushel.
Potatoes, 75 per bushel.
Laed, 08 per pound.
Tallow, 08 per pound.

Answer to ninth interrogatory: I cannot state from recollection how much freight-money was lost; that I suppose will appear by the books of the boat, now at St. Louis.

576 Answer to tenth interrogatory: The shortage, on arrival of the Phil Sheridan at St. Louis that trip, was as follows, viz: 45 sacks of barley, 38 sacks of wheat, 69 sacks of oats, (burlap sacks,) 41 sacks of potatoes, 43 pigs of lead, 9 barrels of tallow.

Answer to first cross-interrogatory: I did not see the colliding of the barge Reaney against the pier.

Answer to second cross-interrogatory: I do not know, as I was not up at the time of the collision.

Answer to third cross-interrogatory: The cargo on the barge at the time of the collision was on the top of the barge.

Answer to fourth cross-interrogatory: I cannot.

Answer to fifth cross-interrogatory: 17 sacks of barley were con-
577 signed to L. Lemeke; 28 sacks of barley to Imbs, Meeyer & Feels; 10 sacks of wheat were consigned to Homeyer & Co.; 28 sacks of the wheat to Whittaker, Verden & Gray; 64 sacks of the oats were consigned to W. S. Humphreys & 5 sacks to Stannard, Benson & Co.; 41 sacks of potatoes were consigned to Imbs, Meyers & Feels. The *lard* was consigned to William Wood. The tallow was consigned to Goodwin, Behl & Co. I don't know who the owners were, unless the consigners were deemed the owners.

Answer to sixth cross-interrogatory: I cannot state whether that portion of the cargo lost was covered by insurance or not. I' was no part

of my business as second clerk to insure goods, & I knew nothing about insurance of the goods.

Answer to seventh cross-interrogatory: I don't know and can't state.

W. H. BARNES.

578 STATE OF WISCONSIN,
County of La Crosse, ss :

I, Angus Cameron, a notary public for the State of Wisconsin, residing in the said county of La Crosse, hereby certify that, on the 12th day of September, A. D. 1872, there came before me, at the city of La Crosse, in the county of La Crosse and State of Wisconsin, William H. Barnes, who, having been by me duly sworn according to law as a witness in said action, I then and there proceeded to take his deposition, in accordance with the agreement and interrogatories hereto attached, where and at which time said deposition was by me reduced to writing in the order in which it stands in the foregoing pages; that said deposition, after having been written down, was by me read over to the said deponent, and by him duly subscribed and sworn to before me, and in my presence, on the day and year and at the place aforesaid

579 And I further certify that there were present at said time neither plaintiff nor defendant, nor the attorney of either of them.

In testimony whereof I have hereunto set my hand and affixed my seal notarial this 12th day of September, A. D. 1872.

[NOTARIAL SEAL.] ANGUS CAMERON,
Notary public for his cousin, Residing in La Crosse County, Wisconsin.

[Notary fees, $10.00.]

(Endorsed :) United States dist. court, district of Iowa. N. W. U. P. Company vs. Samuel Atlee. Deposition of William H. Barnes. Opened & filed Sep. 16, 1872. H. K. Love, cl'k, by E. J. Leech, dep. Filed Oct. 10, 1872. George B. Corkhill, clerk.

580 And upon the trial of said cause the said respondent and appellee, to sustain the issues on its part, introduced and read in evidence certain documents and depositions, of which the following are true copies:

581 For the consideration of two hundred and eighty-eight $\frac{75}{100}$ dollars, I, Edward Johnston, of Lee County, Iowa, hereby convey to John C. Atlee and Nathaniel Bennett, their heirs and assigns, of the same county and State, the following tract of land in the county aforesaid, being a part of section No. four, township sixty-seven north, and range four west, and described as follows, to wit: Beginning at the northwest corner of Leslie's mill lot, of five acres, on the half-breed line; thence south 8½ degrees east, ten chains and fifteen links to a birch stump; thence south 32 degrees west, five chains and sixty-two links to a stone; thence north thirty-six degrees forty minutes west, three chains and thirty-eight links to a stone; thence north eleven chains and ninety-seven links to a stake; thence north eighty-eight degrees east, and three chains and sixty-three links to the place of beginning, containing five acres three rods and four perches, more or less.

And I warrant the title against all persons; and in consideration of the sum of one dollar to her in hand paid by the said John C.

582 Atlee and Nathaniel Bennett, Elizabeth Johnston, wife of the said

Edward Johnston, hereby releases to said John C. Atlee and Nathaniel Bennett all her right and interest of dower, or otherwise, in the parcel or tract of land above described.

In witness whereof the said Edward Johnston and Elizabeth Johnston, his wife, have hereto set their hands this 30th day of March, 1855.

EDWARD JOHNSTON,
ELIZABETH JOHNSTON.

STATE OF IOWA,
County of Lee, sct:

I, James M. Reid, a notary public in and for said county, hereby certify that on this day personally appeared before me the within-named Edward Johnston, and Elizabeth Johnston, his wife, personally known to me to be the identical persons whose names are affixed to the foregoing deed as grantors, and acknowledged said deed to be their voluntary act and deed.

In witness whereof I have hereunto set my hand an' notarial seal this 30th day of March, 1855.

[NOTARIAL SEAL.] JAMES M. REID,
Notary Public.

583 (Endorsed :) Filed for record April 3, 1855, 1 o'clock p. m., and duly recorded in deed-book, Nov. 15, page 383.

ROBERT MCFARLAND, *Recorder.*
By HERMEN F. STEMPEL, *Deputy.*

Exhibit U V W. Filed August 30th, 1872.

D. F. MILLER, JR., *Com'r.*

584 Know all men by these presents that I, Edward Johnston, of the county of Lee and State of Iowa, in consideration of the sum of twelve thousand dollars to me in hand paid by John C. Atlee, of the same county and State, the receipt whereof is hereby acknowledged, do hereby convey unto the said John C. Atlee, heirs and assigns, forever the following real estate, situated in the county of Lee aforesaid, and included within the corporate limits of Fort Madison, and described as follows, to wit:

Being a part of section number four, township sixty-seven north, and range four west, containing twenty-three acres, more or less; bounded on the north of the northern boundery of the half-breed tract south to the Mississippi River, east of land of Atlee & Bennett, and west of the southwest addition to Fort Madison, Iowa.

And I, the said Edward Johnston, hereby warrant the title to the same against the lawful claims of all persons. And I, Elizabeth
585 Johnston, wife of said Edward Johnston, in consideration of the premises, and of the further sum of one dollar to me in hand paid, do hereby relinquish all my right of dower in and to the above-described parcel of land, and all the interest I may have in the same, to the said John C. Atlee, heirs and assigns, forever.

In testimony whereof we have hereto set our hands and seal this 26th day of October, 1857.

EDWARD JOHNSTON. [SEAL.]
ELIZABETH JOHNSTON. [SEAL.]

STATE OF IOWA,
Lee County, ss.:

Be it remembered that, on this 26th day of October, A. D. 1857, personally appeared before me, a notary public in and for said county, Edward Johnston and Elizabeth Johnston, his wife, personal'y known to me to be the identical persons whose names are affixed to the foregoing deed as grantors, and severally acknowledged the said instrument to be their voluntary act and deed.

Given under my hand and notarial seal the day and year last above written.

[SEAL.] JOHN A. SMI'H,
Notary Public.

586 (Endorsed:) Filed for record November 14th, 1857, 8 o'clock a. m., and duly recorded in deed book No. A, page 381.
ROBERT McFARLAND, *Recorder.*
By H. F STEMPEL, *Deputy.*

Exhibit X Y Z. Filed August 30, 1872.
D. F. MILLER, JR., *Com'r.*

587 For the consideration of seven thousand dollars, I, Nathaniel Bennett, and Prudence, his wife, of the county of Lee and State of Iowa, hereby convey to John C. Atlee, of the county of Lee and State of Iowa, the undivided one equal third of the following tract of land, to wit:

Beginning at the northwest corner of Leslie's mill-lot of five acres on the half-breed line; thence south 8½ degrees east, ten chains and fifteen links, to a birch stump; thence south 32 degrees west, five chains and sixty-two links, to a stone; thence north thirty-six degrees forty minutes west, three chains and thirty-eight links, to a stone; thence north eleven chains and ninety-seven links to a stake; thence north eighty eight degrees east, and three chains and sixty-three links to the place of beginning, containing five acres, three roods, and four perches, more or less. Also the following tract of land, to wit: Beginning at a point on the bank of the Mississippi River where the line known as the half-breed line comes the said river; thence along said line west to a stone
588 eleven chains & 92 links; thence south 8½° east, 10 chains & fifteen links to a birch stump on the bank of said river; thence up along said river to the place of beginning, containing five acres, more or less, and being the east part of the fractional southeast quarter of section four, township sixty-seven north, of range four west, all of said land lying and being in the county of Lee and State of Iowa, and warrant the title against all persons whomsoever.

In testimony whereof we have hereunto signed our names this 28th day of , A. D., 1858.

NATHANIEL BENNETT. [L. S.]
PRUDENCE A. BENNETT. [L. S.]

The interlining on the third space done before signing.

STATE OF IOWA,
County of Lee, ss:

Be it remembered that, on this 28th day of January, A. D. 1858, personally appeared before me, a justice of the peace in and for said county,

Nathaniel Bennett and Prudence A. Bennett, his wife, personally known to me to be the identical persons whose names are affixed to the foregoing deed as grantors, and severally acknowledged the said
589 instrument to be their voluntary act and deed.

In testimony whereof I have hereunto set my hand the day and year last above written.

P. H. BABCOCK.
J. Peace.

(Endorsed:) Filed for record January 29th, 1858, 9 o'clock a. m., and duly recorded in deed-book A, page 414.

ROBERT McFARLAND, *Recorder.*
By H. F. STEMPEL, *Deputy.*

Exhibit Z Y X. Filed August 30th, 1872.

D. F. MILLER, JR., *Com'r.*

590 In D. C. U. S., for Iowa. In admiralty.

NORTHWESTERN UNION PACKET COMPANY libellant,
vs.
S. ATLEE, RESPONDENT.

Pl'ff admits as evidence in this case that the frac. SE ¼ of sec. 4 in Tp 67, R. 4 west, on half-breed tract in Lee County, Iowa, drawn in share No. 79 of the decree of the parties, the half-breed tract in Lee County, Iowa, in 1841, by James Miller, who conveyed each by deed, of date June 21st, 1842, to H. P. Reid & Ed. Johnston, who received and took manual possession under said deed, and that subsequently said Reid conveyed his interest in said realty to Ed. Johnston, who continued in possession until his sale to John Atlee, and then the possession of said realty was delivered to said John Atlee.

J. HAM DAVIDSON and
HOWELL & RICE,
Att'ys for libellant.

SEPT. 16, 1872.

591 Deed.—James Miner to Reid & Johnson:

Know all men by these presents that I, James Miner, of the Territory of Iowa, a half-breed, of the Sac and Fox tribe or nation of Indians, in consideration of the sum of three hundred dollars, to me paid by Hugh T. Reid and Edward Johnston, of the county of Lee, and Territory aforesaid, the receipt whereof I do hereby acknowledge, do by thes' presents give, grant, bargain & sell unto the said Hugh F. Reid and Edward Johnson, their heirs and assigns, a certain parcel of land, situate in the county and Territory aforesaid, and being a portion of the half-breed tract, to which I am entitled under treaty of the fourth of August, one thousand eight hundred and twenty-four, and act of Congress of the United States of June one thousand eight hundred thirty-four, bounded and described as follows, to wit: The fractional southeast
quarter of section four, in township sixty-seven north, of range
592 four west, containing thirty-four acres, more or less, together with all the privileges and appurtenances to the said land in any wise appertaining or belonging, to have and to hold the above-granted prem-

ises to the said Hugh J. Reid and Edward Johnson, their heirs and assigns forever.

In testimony whereof I, the said James Miner, have hereunto set my hand and seal nineteenth day of June, A. D. 1842.

JAMES MINER.

Attest: THO'S J. CONNOLY.
JESSE C. SMITH.

TERRITORY OF IOWA,
County of Lee, ss:

I, Joel C. Walker, clerk of the district court in and for said county of Lee, do hereby certify that Jesse C. Smith, whose name is subscribed to the above deed as witness, is personally known to me to be the same person whose name is subscribed as a witness thereto, and that the said Jesse C. Smith, being duly sworn by me, testified that James Miner, whose name is subscribed to the above deed as a party, is the person who executed said instrument, and that he, the said Jesse C. Smith, subscribed his name thereto as a witness thereto.

593 Given under my hand and seal of the district court this 21st day of June, A. D. 1842.

JOEL C. WALKER, *Clerk.* [L. S.]

STATE OF IOWA,
Lee County, ss:

I, Noble Warwick, recorder of deeds, &c., do hereby certify that the within and foregoing deed of James Miner to Hugh T. Reid and Edward Johnson, is a true and correct copy of the same, as the same appears of record, and that the same is duly recorded at length in deed-book No. 1, pages 607 & 608, and that the same was duly filed for record Sept. 1st, 1842, at ½ 8 o'c. a. m.

Witness my hand and official seal at Fort Madison, Iowa, this 13th day of September, A. D. 1872.

[SEAL.] NOBLE WARWICK,
Recorder, Lee Co., Iowa.

[U. S. int.-rev. st'p, 5 cents.]

594 Deed.—John C. Atlee to Sam'l J. Atlee.

For the consideration of ten thousand dollars, I, John C. Atlee, of the county of Lee and State of Iowa, hereby convey to Samuel J. Atlee, of the county of Lee, and State of Iowa, the following tract of land, to wit: Being a part of section No. four, township sixty-seven north, and range four west, and described as follows, to wit: Beginning at the northwest corner of Leslie's mill-lot of five acres on the half-breed line; thence south 8½ degrees east, ten chains and fifteen links to a birch stump; thence south 32 degrees west, five chains and sixty-two links to a stone; thence north thirty-six degrees forty minutes west, three chains and thirty-eight links to a stone; thence north eleven chains and ninety-seven links to a stake; thence north eighty-eight degrees east, and three chains and sixty-three links to the place of beginning, containing five acres, three rods and four perches, more or less. Also lots number six hundred and twenty-two and six hundred and twenty-three in the town of Fort Madison.

595 Also the following lots in J. Atlee's addition to the city of Fort

Madison, Lee County, Iowa, to wit: Lots No. four, (4,) five, (5,) fifteen, (15,) sixteen, (16,) seventeen, (17,) eighteen, (18,) and nineteen, (19,) eight, (8,) nine, (9,) ten, (10) and eleven, (11,) in block No. one (1;) also lots four, (4,) five, (5,) six, (6,) and seven, (7,) in block No. two, (2,) and all of block No. three, (3,) all of block four, (4,) except lot No. ten, (10,) & all of block No. five, (5,) all of block No. six, (6,) and fractional blocks seven, (7,) and eight, (8,) in the county of Lee and State of Iowa; and warrant the title against all persons whomsoever.

In testimony whereof we have hereunto signed our names this eleventh day of January, A. D. 1860.

JOHN C. ATLEE. [L. S.]
EMELINE S. ATLEE. [L. S.]

STATE OF IOWA,
County of Lee:

Be it remembered that on this eleventh day of January, A. D. 1860, personally appeared before me, a notary public in and for said county, John C. Atlee and Emeline S. Atlee, his wife, personally known to me to be the identical persons whose names are affixed to the fore-
596 going deed as grantors, and severally acknowledged the said instrument to be their voluntary act and deed.

In testimony whereof I have hereunto set my hand and notarial seal this day and year last above written.

[L. S.] P. H. BABCOCK,
Notary Public.

STATE OF IOWA,
Lee County, ss:

I, Noble Warwick, recorder of deeds, &c., within and for the county and State aforesaid, do hereby certify that the within and foregoing is a true copy of a deed made by John C. Atlee and Emeline S. Atlee, his wife, to Samuel J. Atlee, as the same appears of record in my office, and that the same was filed for record January 20, 1860, at 8 o'clock a. m., and duly recorded at length in deed-record "B," pages 95 & 96, record of Lee Co., Iowa.

597 Witness my hand and official seal, at Fort Madison, Iowa, this 21st day of August, A. D. 1872.

[SEAL.] NOBLE WARWICK,
Recorder Lee County, Iowa.

[U. S. int. -rev. st'p, 5 cents.]

(Endorsed:) Exhibit R. S. F. Filed Aug'st 30th, 1872. D. F. Miller, jr., com'r.

598 UNITED STATES OF AMERICA,
State of Iowa, ss:

District court for district of Iowa, at Keokuk.

NORTHWESTERN UNION PACKET CO., LIBELANT, *ag'st* SAMUEL ATLEE, RESPONDENT. } Admiralty.

Depositions of sundry witnesses to be used on the trial of the above cause, taken before D. F. Miller, jr., at F't Madison, Iowa, in pursuance of the order of Hon. J. M. Love, in admiralty, judge of the above court, at Keokuk, on the 21st day of August, 1872.

ises to the said Hugh J. Reid and Edward Johnson, their heirs and assigns forever.

In testimony whereof I, the said James Miner, have hereunto set my hand and seal nineteenth day of June, A. D. 1842.

JAMES MINER.

Attest: THO'S J. CONNOLY.
JESSE C. SMITH.

TERRITORY OF IOWA,
County of Lee, ss:

I, Joel C. Walker, clerk of the district court in and for said county of Lee, do hereby certify that Jesse C. Smith, whose name is subscribed to the above deed as witness, is personally known to me to be the same person whose name is subscribed as a witness thereto, and that the said Jesse C. Smith, being duly sworn by me, testified that James Miner, whose name is subscribed to the above deed as a party, is the person who executed said instrument, and that he, the said Jesse C. Smith, subscribed his name thereto as a witness thereto.

593 Given under my hand and seal of the district court this 21st day of June, A. D. 1842.

JOEL C. WALKER, *Clerk.* [L. S.]

STATE OF IOWA,
Lee County, ss:

I, Noble Warwick, recorder of deeds, &c., do hereby certify that the within and foregoing deed of James Miner to Hugh T. Reid and Edward Johnson, is a true and correct copy of the same, as the same appears of record, and that the same is duly recorded at length in deed-book No. 1, pages 607 & 608, and that the same was duly filed for record Sept. 1st, 1842, at ½ 8 o'c. a. m.

Witness my hand and official seal at Fort Madison, Iowa, this 13th day of September, A. D. 1872.

[SEAL.]

NOBLE WARWICK,
Recorder, Lee Co., Iowa.

[U. S. int.-rev. st'p, 5 cents.]

594 Deed.—John C. Atlee to Sam'l J. Atlee.

For the consideration of ten thousand dollars, I, John C. Atlee, of the county of Lee and State of Iowa, hereby convey to Samuel J. Atlee, of the county of Lee, and State of Iowa, the following tract of land, to wit: Being a part of section No. four, township sixty-seven north, and range four west, and described as follows, to wit: Beginning at the northwest corner of Leslie's mill-lot of five acres on the half-breed line; thence south 8½ degrees east, ten chains and fifteen links to a birch stump; thence south 32 degrees west, five chains and sixty-two links to a stone; thence north thirty-six degrees forty minutes west, three chains and thirty-eight links to a stone; thence north eleven chains and ninety-seven links to a stake; thence north eighty-eight degrees east, and three chains and sixty-three links to the place of beginning, containing five acres, three rods and four perches, more or less. Also lots number six hundred and twenty-two and six hundred and twenty-three in the town of Fort Madison.

595 Also the following lots in J. Atlee's addition to the city of Fort

Madison, Lee County, Iowa, to wit: Lots No. four, (4,) five, (5,) fifteen, (15,) sixteen, (16,) seventeen, (17,) eighteen, (18,) and nineteen, (19,) eight, (8,) nine, (9,) ten, (10) and eleven, (11,) in block No. one (1;) also lots four, (4,) five, (5,) six, (6,) and seven, (7,) in block No. two, (2,) and all of block No. three, (3,) all of block four, (4,) except lot No. ten, (10,) & all of block No. five, (5,) all of block No. six, (6,) and fractional blocks seven, (7,) and eight, (8,) in the county of Lee and State of Iowa; and warrant the title against all persons whomsoever.

In testimony whereof we have hereunto signed our names this eleventh day of January, A. D. 1860.

JOHN C. ATLEE. [L. S.]
EMELINE S. ATLEE. [L. S.]

STATE OF IOWA,
County of Lee:

Be it remembered that on this eleventh day of January, A. D. 1860, personally appeared before me, a notary public in and for said county, John C. Atlee and Emeline S. Atlee, his wife, personally known to me to be the identical persons whose names are affixed to the fore-
596 going deed as grantors, and severally acknowledged the said instrument to be their voluntary act and deed.

In testimony whereof I have hereunto set my hand and notarial seal this day and year last above written.

[L. S.] P. H. BABCOCK,
Notary Public.

STATE OF IOWA,
Lee County, ss:

I, Noble Warwick, recorder of deeds, &c., within and for the county and State aforesaid, do hereby certify that the within and foregoing is a true copy of a deed made by John C. Atlee and Emeline S. Atlee, his wife, to Samuel J. Atlee, as the same appears of record in my office, and that the same was filed for record January 20, 1860, at 8 o'clock a. m., and duly recorded at length in deed-record "B," pages 95 & 96, record of Lee Co., Iowa.

597 Witness my hand and official seal, at Fort Madison, Iowa, this 21st day of August, A. D. 1872.

[SEAL.] NOBLE WARWICK,
Recorder Lee County, Iowa.

[U. S. int. -rev. st'p, 5 cents.]

(Endorsed:) Exhibit R. S. F. Filed Aug'st 30th, 1872. D. F. Miller, jr., com'r.

598 UNITED STATES OF AMERICA,
State of Iowa, ss:

District court for district of Iowa, at Keokuk.

NORTHWESTERN UNION PACKET CO., LIBELANT, *ag'st* SAMUEL ATLEE, RESPONDENT. } Admiralty.

Depositions of sundry witnesses to be used on the trial of the above cause, taken before D. F. Miller, jr., at F't Madison, Iowa, in pursuance of the order of Hon. J. M. Love, in admiralty, judge of the above court, at Keokuk, on the 21st day of August, 1872.

On August 27th, 1872, came before me, libellant, by its attorney, J. H. Snell & Rice, and respondent, by McCleary, Miller & McCleary, and thereupon respondent produced B. W. DAVIS, who, being first duly sworn according to law, testified as follows:

Direct testimony:

My name is B. W. Davis; age, 44 years; residence, F't Madison;
599 present occupation, railroading; formerly was steamboat captain on the Upper Mississippi River, between Keokuk and Davenport, but most of the time between F't Madison and Davenport; was on the river, acting in the capacity of steamboat captain for five years, from 1860 to 1865.

1. Q. Are you acquainted with the location of Atlee's mill, below F't Madison?

A. Yes, sir.

2. Q. Are you acquainted with the gravel bar or delta at the mouth of French Creek, just above Atlee's mill?

A. Yes, sir.

3. Q. Do you know which is the direction of the current after it passes around that gravel-point? And, if you do, state your knowledge on the subject.

A. I do not know at the present how it runs. I used to know. It used to run from the Iowa shore toward the Ill's shore. When I
600 was on the river it started off quartering from the Iowa shore toward the Ill's shore, or seemed to. The channel has always been nearer the Iowa shore opposite Atlee's mill than the Ill's or island shore. The channel is quite wide opposite Atlee's mill. There is good water from Atlee's mill to two-thirds across the river, in my judgment.

4. Q. About how far from the shore, in front of Atlee's mill, was the usual route of steamboats at the time you navigated the Mississippi River?

(Objected to by libellant as immaterial.)

Ans. It was three or four hundred feet outside of the rafts that was lying in front of the mill; three hundred feet at the least.

5. Q. About how wide were those rafts usually?

Ans. I do not know.

6. Q. Can you inform me which way the current set from the
601 end of the gravel-bank at the mouth of French Creek; whether directly straight down the river or towards the Iowa or Ill's side?

Ans. It used to set a little quartering towards the island or Ill's shore.

7. Q. How often during those five years of your navigation of the Mississippi did you each week make a trip to Rock Island?

Ans. During the season of navigation I made a trip every two days, Sundays excepted, being three trips a week.

8. Q. Did you ever pass that gravel-bank on the river in front of Atlee's mill in the night-time?

Ans. Yes, sir; a good many times.

9. Q. Did you ever run your boat over the spot where the upper pier stands now, in front of Atlee's mill?

Ans. I don't know, indeed.

10. Q. Are you well acquainted with the location of the upper pier, at Atlee's mill?

Ans. Yes, sir; as I can see it from the shore. I have never passed

602 that pier in day-light on a steamboat since it was built, or on any other boat, or at any other time.

11. Q. How, in your judgment, does that pier affect the ordinary channel of the river as boats run in front of Atlee's mill, when you navigated the river?

(Objected to by libelant, because witness has not been shown to be, and does not propose to be, an expert in such matters.)

Ans. I should have no hesitation in saying that it is no obst'uction in steamb'at navigation.

12. Q. About how far out beyond that pier does the channel or where boats used to run during your navigation of the river?

Ans. The chann'l was wide there; a bo't could run about three hundred or more feet, or run close into the rafts.

Cross-examination by libelant:

603 1. Q. Were you ever a pilot?

Ans. I never was.

2. Q. Do you consider yourself an expert in matters of channel and current on the Mississippi River?

Ans. No, sir.

3. Q. Have you navigated the river about Atlee's mill since the year 1865?

Ans. No, sir.

4. Q. Is your reccol'ection very clear and distinct about the direction of the channel below the gravel bar?

Ans. Yes, sir.

5. Q. In navigating the river from 1860 to 1865, did you have charge of the navigation of the boat, or of the direction in the river where the boat should run, or leave that matter to the pilot of the boat?

Ans. I performed the ordinary duties of a captain. The boat was in charge of the pilot as to channel and direction.

6. Q. Do you know where the channel in the river about Atlee's
604 mill is now or was in April, 1870?

Ans. Yes, sir. I know from observing boats run down there nearly every week during the season of navigation since I have been in F't Madison. The boats seem to run opposite Atlee's mill in the same direction they did when I was on the river, and I do not think there has been any change in the channel for a number of years there.

7. Q. Do you know of your own personal knowledge whether the channell of the river in front of Atlee's mill has changed any since you navigated the river in 1865?

Ans. No, sir; I only know by observing the way boats run there.

8. Q. How deep was the water in the place where the upper pier now stands from 1860 to 1865?

Ans. I don't know.

9. Q. Can you tell whether boats could have run over the place where that pier stands from 1860 to 1865?

605 Ans. Yes, sir; they could have run there, I have no doubt, or anywhere along that shore. I have landed there many a time against rafts.

10. Q. Did you ever see other boats land there against rafts?

Ans. I think I have.

12. Q. Did Atlee always have rafts next to his mill?

Ans. Most generally. I don't remember of ever passing there without seeing a raft.

12. Q. Did he not sometimes have very few logs there?

Ans. Yes, sir.

13. Q. Did he keep lights on those logs or rafts?

Ans. I almost always saw lights there; but whether they were on the rafts I cannot say.

14. Q. Did he keep lights on the upper pier prior to the injury to the barge Jack Reaney?

Ans. I don't know.

606 15. Q. At the time you were acting as captain on the river was there a sand-bar out in the Mississippi opposite the gravel-bar and upper pier?

Ans. There was a second bar opposite the gravel-bar at the mouth of French Creek, but that is a good ways above the pier.

16. How far was said sand-bar from the point of said gravel-bar?

Ans. I don't know. We had to run very close to the point of the gravel.

17. Q. How far below the gravel-bar did the current began to turn toward the Ill's shore?

Ans. I think right at the point of the gravel-bar.

18. Q. Do not pilots now run down by the piers and make the crossing to the Ill shore below the piers?

Ans. Yes, sir.

607 19. Q. Is it not customary for owners of rafts, flat-boats, and other crafts lying b'oard to the shore of the river in the night to keep lights on them in the night-time?

Ans. Yes, sir; when they are landed in what is considered close or dangerous places.

20. Q. Has not Mr. Atlee sometimes kept his rafts or logs under the gravel-bar?

Ans. I have seen logs extending from the gravel-bar to down below the mill.

21. Q. Is it not more difficult to navigate boats with a barge attached to the side of it than without one?

Ans. Yes, sir.

B. W. DAVIS.

Witness' fees, one day, $1.50.

Subscribed and sworn to before me this 27th day of Aug., 1872.

D. F. MILLER, JR., *Com.*

608 GEORGE ANDERSON, witness, of lawful , was then produced by respondent, and, after being duly sworn, testifies as follows:

Direct testimony.

My name is George Anderson. I reside at Montrose, Lee Co., Iowa. I am 46 years old; am a ship-carpenter, and follow that business at Montrose, and have followed it there for the last 13 years. I have been ship-carpenter, and followed that business since I was a boy. I saw the Jack Reaney after she was brought to Montrose to be repaired.

1st Q. Do you remember about the time the Jack Reaney was sunk?

Ans. I think it was in the month of April, 1871.

2. Q. What is your opinion about the ability of the libellant in this suit to have floated said barge Reaney to Montrose for repairs

609 immediately or within a few days after she was sunk?

(Objected to by att'ys for libellant as incompetent, as calling

for the opinion of the witness, he not having been shown to be competent as an expert in raising and floating barges.)

Ans. I think it could have been done.

3. Q. Have you known of barges that were sunk in the Mississippi and filled with water that have been floated in that condition to Montrose?

(Objected to by libellant, because it has not been shown that the witness knows anything about the condition of the barge at the time of the injury to her.)

Ans. I have. There has been several in a sunken condition brought to Montrose; one of libellant's barges was among the number; it was brought from above F't Madison.

4. Q. What was the injury to the one of libellant's barges that was brought to Montrose?

610 (Objected to as immaterial by libellant.)

Ans. A piece of knuckles was stove in, a few timbers broken.

5. Q. Have you ever been concerned in raising and floating a barge when sunk?

(Objected to as immaterial.)

Ans. Yes, sir; I have been concerned in raising both barge and lighters.

6. Q. When a barge is sunk or having a portion of her keel broken in at the bottom, or by having a part of one of her sides smashed in, can she or can she not be floated, if the water be deep enough?

Ans. She can, if there be no load in her.

7. Q. How far is it by the river from Atlee's mill to your ship-yard in Montrose?

Ans. It is called 12 miles.

8. Q. I now ask your opinion, as an expert, whether the said Raeney, though she had been badly injured in her side and *knell*, could

611 not have been floated to Montrose, if she had no load in her, if the water in the river was high enough?

(Objected to by libelant as incompetent, calling for the opinion of the witness in regard to a matter in which he has not been shown to be expert, and because it has not been shown that the witness ever saw the Jack Raeney for months after she was injured, or made any examination of her at the time she received her injury or months after.)

Ans. Yes, sir; she could.

Cross-examination by libelant.

1st Q. Do you know, of your own knowledge, when the said barge was injured and sunk?

Ans. I don't know the exact day the barge was injured; all I know is from report of men on the boat and men going up to look at her.

2. Q. When did you first see the barge after she was injured?

612 Ans. I first saw her when they were blocking her up to repair her at Atlee's mill.

3. Q. How long was that before she was taken to Montrose?

Ans. It may have been three or four weeks.

4. Q. Did you make a close examination of her when you first saw her?

Ans. No, sir.

5. Q. Did you examine her at all at that time?

Ans. Not more than to look at her; was not aboard of her.

6. Q. Was she not repaired in part before she was taken to Montrose?

Ans. Yes, sir; two men went from my yard to help repair her.

7. Q. Was she not very badly injured?

Ans. Yes; the repairs seemed to show that she had a rather *a* bad bruise in her side.

S. Q. Did you ever raise a barge yourself?

Ans. Yes, sir; I have superintended the raising of steamboats and barges.

613 9. Q. How many barges have you ever raised?

Ans. I believe I have raised one here for Capt. Patton, of Burlington. I beleive that was the only one I was superintending of raising of. Capt. Patton and I was together in that. I done the stopping of the leaks and Capt. Patton pumped the water out of the boat. I helped raise another old one, but cannot remember the name of it.

10. Q. Was the barge you raised with Capt. Patton, as badly injured as the Jack Ra'ney?

Ans. No, sir.

11. Q. In April, 1871, was not the river rising to its spring height; did it not continue to rise to some time afterwards?

Ans. I think the river was rising to its brink height in April, 1871; but think it was getting towards the top of it.

12. Q. Suppose the side and bottom of a barge in the middle of her for about 20 feet to be broken and crushed in, a seam spr'ng
614 apart 50 feet in length, a dun'age stoven in and broken up, her knuckles broken in at the middle of the boat so as to make her very week in the center, would there not be danger, supposing her to be lying in water 6 or 7 feet deep, with the water over her deck, of breaking her in two in trying to raise her?

(Objected to by respondent, because if the water was deep enough she would raise herself, unless there was a load in her.)

Ans. That would depend on the method employed to raise.

13. Q. Do you know at the time of the accident there were barges at Madison or Montrose which could have been obtained to raise and float the Jack Raeney to Montrose.

Ans. I don't know about barges; there were plenty of lighters.

14. Q. What are used in raising barges like the Jack Reiney?

Ans. Barges that have been raised around here lately have
615 been raised by bulk-heading around the break, or floating them if the water is deep enough.

15. Q. Would it not cost a grea' deal more to raise a barge in deep water and float her 12 miles and then repair her, than to repair her after the water had fallen and a good part of the barge lay on dry land?

Ans. The differences (in my opinion) would not have been much in point of cost.

Re-examined by respondent:

1st Q. Could or could not the roof of the barge Reiney have been replaced upon the barge if it were good at the time the barge was injured in the side and hull without material injury to it?

Ans. Yes; if it was not broken with the sinking.

Recross-examination by libellant:

1st Q. How would it have been if the roof had been badly broken
616 up and injured, not only at center of the barge but at other places.

Ans. What is broken has got to be replaced with good.

GEO. ANDERSON.

Fees two days, $3.00, paid by respondent.

Subscribed and sworn to before me this 27th day of August, 1872.

D. F. MILLER, JR.,
Commissioner.

JOHN ATLEE, of lawful age, being duly sworn, testifies as follows, produced by respondent.

Direct evidence on questions by respondent:

My name is John Atlee. I am 56 years old. I reside at F't Madison, Iowa; came to F't Madison, 1837. I was a carpenter in early life. I commenced building what is called the Atlee mill in 1854. I owned the ground the mill is located on, and afterwards conveyed it to my
617 son, Samuel Atlee, the respondent in this suit. The mill lands consists of about 30 acres, more or less, lying on the bank of the Mississippi River. When the mills were built the corporation of the city of F't Madison did not include the mill lands; since then the corporation limits have been extended so as to include the mill lands.

1st Q. Where have you been working most since the Atlee mills were started?

A. Most of my time has been employed at the mill?

2. Q. Do you know the landing and channel in front of the mill intimately or not?

Ans. I do.

3. Q. Are you acquainted with the gravel point at the mouth of French Creek?

A. I am.

4. Q. Have you had any experience in landing rafts above, below, or at said mill; and, if you do, what experience and how long?

618 A. I have landed a great many rafts in there in the last 12 years or more up to the present time. I have landed above the mill and in front of the mill.

5. Q. Have you had occasion in the management of said mill to remove said logs into the mill for sawing purposes.

(Objected to as leading; question withdrawn.)

5. Q. Are you acquainted with ordinary steamboat channel in front of said mill—I mean where steamboats usually run?

A. Yes.

7. Q. Are you acquainted with the location of the pier in front of said mill?

A. Yes.

8. Q. How near to that pier do the steamboats usually run?

A. They run within two to four hundred feet from the pier; hardly two boats run the'. I have seen them run a mile from it. I have
619 rode on them when they did it; that was on the other side of the island.

9. Q. Do you, from personal observation and long experience, know in which way the current or channel of the river sets after it passes the point of the gravel-bar or delta at the mouth of French Creek? and, if you answer yea, state its direction.

A. At the point of that bar the current sets very hard toward the island on the Ill's side.

10. Q. How does a raft usually run after it passes the point of the gravel-bar?

A. At a low stage of water or a medium stage they pass outside of the gravel-bar, and then pass rather straight down the river, angling some toward the Ill's shore until they get down about opposite the mill when the' pull for the Ill's shore.

11. Q. Why do they pull for the Ill's shore when they get nearly opposite mill?

A. To keep off of a bar on the Iowa side, below the mill.

620 12. Q. Will you state whether that bar below the mill, on the Iowa side, is out in the river, or extends clear from the Iowa shore, and whether it is a common sand-bar or whether it is also a gravel and stony bar?

(Objected to as leading, by libellant.)

A. It is a gravel-bar, and extends from the Iowa shore.

13. Q. How far do rafts, in a low stage, or a medium stage of water, usually pass in front of the upper pier?

A. From one to three hundred feet; the further out the easily they make their crossing.

14. Q. How many men and boys have you usually at work in and about those mills?

(Objected by libellant as immaterial.)

A. Between a hundred and a hundred and forty. I do not keep the pay-roll, and do not know exactly.

15. Q. Has the mill other persons employed in its operations; and, if yea, in what respect and about how many?

621 (Objected to by libellant as immaterial.)

A. Yes; we have men on the river running on rafts, numbering about twenty men; sometimes forty. We have but two lumber yards now away from F't Madison.

16. Q. Where are most of your sales of lumber made at?

A. At the mills, in F't Madison; we are now doing mostly a wholesale business.

17. Q. What do your manufactures, at the mills, consist of mostly?

A. Lumber, shingles, laths, pailings, doors, sash frames, and boxes, bridge-timbers, &c.

18. Q. What proportion of the time, since the mill was built in 1854, has the rafts laid along the river in front or near by your mills?

A. During the summer season we aim to keep them there all of the time. We do not always have a full raft, but we are never out but a few days at a time. We sometimes have two or three rafts lying there at the time. For the first few years we were not able to purchase so

622 many at a time, but for the past five years we have had logs during all of the summer season.

19. Q. Have you had them there at any other time, except the summer season?

A. We have had them there, spring, summer, fall; we have logs there seven months in the year on an average.

20. Q. About how many logs per day do you work up?

A. We work up between 30 and 40 thousand feet of logs per day.

21. Q. What will thirty or forty thousand feet of lumber sell for?

(This question objected to, and all questions pertaining to the same subject as immaterial.)

A. It is worth between eight hundred and a thousand dollars.

22. Q. How long has it been since your establishment was turning out between eight hundred and a thousand dollars worth of manufactured articles per day?

623 A. Five or six years.

23. Q. Please describe the machinery your works consists of.

A. One saw-mill; two saws for making lumber; three turning-saws; three edging-saws; two saws for manufacturing laths, and one drag-saw; one shingle-mill, with four shingle-saws two drag-saws; one large bolting-saw; jointer, (12;) and we have five steam-engines running to work our machinery; also, a planing-mill, sash and door manufactory, and four or five planing-machines.

24. Q. What is the length and width of a medium-size raft of logs?
A. Twelve strings would be a medium-size ratt of logs, which would be about 200 feet wide and 450 feet long.

25. Q. Has anything, during the last dozen years or more, covered the space on the river in front of your mill, extending from the shore out; and, if yea, state what has done it, and how far it has extended out?

624 (Objected to as immaterial by libellant.)

A. A raft of logs has extended out, sometimes, 75 feet beyond the pier out in the river.

26. Q. How much frontage of water, before your mill, do real'y need for the accom'odation and convenience of your mill?
(Objected to by libelant as immaterial, and as for calling for the opinion of the witness.)

A. We use about two hundred feet in width, and about thirteen hundred feet in length.

27. Q. State what your piers are put up for, and what is the necessity of them?
(Objected to as immaterial by libelant.)

A. They were put up for to fasten our booms to, and to protect our rafts from winds and waves. The wave from boats would tear our rafts to pieces were it not for the booms fastened to the piers.

625 The waves of a steamboat broke about forty logs loose, before we had our piers, at one time, and we have suffered damages at other times.

28. Q. Explain how you get rafts to drop in behind the gravel point at the mouth of French Creek when the water is not high enough to let them pass over the delta or ground?
(Objected to by libelant as immaterial.)

A. We tie a heavy line to a snubbing post on the shore, then let them run out until they get by that gravel point, then we fasten the other end of the line on the raft, which swings them in, otherwise they would never come in by that pier; they would ordinarily go out a hundred feet from the pier. I know it from experience.

Que. 29. Have you used any other means of running rafts; and, if so, what are they?
(Objected by libelant as immaterial.)

626 A. We owned a steamboat, William White, and used her for the purpose of bringing rafts from the pinery and running them into our booms.

Ques. 30. Do you know how many booms and piers there are, commencing at Keokuk and extending up the Mississippi to St. Paul?
(Objected to as immaterial by libelant.)

A. I can only remember of 17 piers and booms. There are some booms where there are no piers.

31. Q. Are any of these mills which have the piers and booms you referred to as large as yours?
(Objected to as leading and immaterial.)

A. Yes.

32. Q. What proportion do the other mills who have the booms and piers referred to compare with you and your son's mill?

A. Some are larger, some are smaller.

627 33. Q. How long have some of the other piers you referred to been in the river?
(Objected to as immaterial.)

A. Some of them have been there for ten years and perhaps longer.

34. Q. Did you see the Jack Reiney, soon after she struck the pier?

A. I saw her with' a couple of days.

35. Q. Do you know, from personal knowledge and observation, that a barge, lighter, or other water-craft will float in water where the water is deep enough to cover every part of it all over, and there is no load in it? If yea, state what the facts are.

A. Yes, they will. I have caught them in the river with their whole side bursted in. I believe you may cut a boat right in t'o, and each half will float. I know it will. It is nothing but wood. I have also had a boat loaded with lumber, and I was on board of her when she
628 split in the side and sunk until the top was level with the water, and I brought her to shore and unloaded the lumber.

36. Q. Do you know how high the water was on the gravel-bar at the mouth French Creek, at the time the barge Jack Reiney struck the pier?

A. I don't know exactly how deep it was, but I know that steamboat coul' not have gone over it at the time of the accident. I think the bar was dry about one hundred feet from the shore.

37. Q. I wish you would state what is the character of the current after it passes around the point of the bar at the mouth of French Creek?

A. It is very swift.

38. Q. Have you ever made an experiment by throwing anything out in front of that gravel-bar to notice where it is carried by the
629 current? and, if yea, state how near or far the thing throwed out passed from that pier.

A. I have throwed in logs of wood up by the ferry-landing and let them float down when the wind was slightly on this shore, and they passed around the bar, and went from 50 to 100 feet outside of the pier. I have also seen boats, skiffs, &c., adrift, and they would do the same thing. I have also let logs loose from the rafts above that bar, and have followed them down thinking to catch them at that point of the bar, but the curren' there would take them right out and I would have to get a boat and go after them.

40. Q. When was the upper pier erected?

A. I think the pier was erected between the fall of 1870, and the spring of 1871.

41. Q. Did anything occupy the place where the pier now stands prior to 1870?

A. There were some rocks in there.

630 42. Please state how much of that rock-pile was out of water during the summer and fall of 1870?

A. Part of the time the rock-pile was four or five feet out of water, and part of the time was not out at all.

43. Q. About how long and wide was the rock-pile during the year 1870?

A. I should think between thirty and forty feet at its base.

44. Q Do you know how much of the top pier was out of water at the time of the injury to the Jack Raeny?

A. I don't know exactly. I think they have the exact measurement. I think it is six feet perhaps eight.

45. If you don't know exactly give me your judgment as to the height of the pier above the water at or about the time the Jack Raeny struck the pier.

A. In my judgment the pier was six or eight feet above the water.

631 46. Q. Will you state whether the shore in front of your mill was a smooth sandy or rocky shore when you first built your mills there?

A. There were a number of large boulders laying along the shore. We have removed a great many. Some we have hauled off, others we dug a hole long side of them and buried them; they were too heavy to haul. We removed them because they were in the way of rafts or boats. Some boats refused to come in and get our shingles because they were afraid of the rocks. We removed them before we erected the piers. We removed some of them 15 years ago, and some of them two years ago.

47. Q. State whether you have or have not seen a steamboat pass down the river over the place where that upper pier stands, since the mills were erected 17 or 18 years ago?

632 Ans. I never did, and I don't believe they ever did.

48. Q. Could they or could they not have passed along there while you had rafts lying around there?

A. No, they could not if we had half a raft there. A half of a ten-string raft would be 85 feet wide.

49. Q. What have been your opportunities of noticeing steamboats pass the mill for the last 17 or 18 years?

A. I have seen thousands of rafts and boats pass there altogether. I have seen as many as 20 rafts a day pass.

50. Q. Did or did not the waves occasioned by passing boats cause you more particularly to notice boats as they passed, because of danger to your rafts from the waves before the piers were erected?

(Objected to as leading and irrelevant.)

A. Yes; they did draw our attention sometimes very forcibly.

633 When the waves would break our logs loose we would have to run and catch them.

Cross-examination by libelant:

Ques. 1. How are you related to respondent in this suit?

A. I am his father.

2. Q. Are you interested in this suit?

A. I am.

3. Q. State the extent of your interest.

A. I own an interest in the property.

4. Q. In the year 1870 was not the rock-pile you have been speaking about covered with water when the river was at a high stage?

A. Yes, sir.

5. Q. Do you know the exact dimension of the rock-pile in 1870?

A. I do not; thirty or 40 feet at the base.

6. Q. Were not additions made to it after the fall of 1870?

A. I don't think there were, except the pier was built on the top of the rock-pile.

634 7. Q. How much higher is the pier now than the rock-pile was in 1870?

A. It is considarably higher. I don't know how many feet. I guess four or five feet.

8. Q. When did you finish adding rock to the rock-pile?

A. I do not know at what time. I think I was away.

9. Q. Was it in the summer or fall of 1870?

A. I don't think it was at that time. It must have been before.

10. Q. After the cribbing or wood-work was put on it did you not fill the cribbing with stone?

A. I did.

11. What was the depth of the stone you put in the cribbing?

A. It was about 12 o' 13 feet, as near as I can judge.

12. Q. All this cribbing, and stone with which cribbing was
635 filled, was placed on top of the rock-pile and put on in the winter of 1870 and 1871?

A. Yes, sir.

13. Q. Do you know, of your own knowledge, how much pier was out of water at the time of the accident to the Jack Reaney?

A. I think six or eight feet

14. Q. Did you measure it?

A. I did not.

15. Q. What was the stage of the water in the river at that time?

A. It was about a medium stage. It was not high or not low. It was rising.

16. Q. How deep was the watter around that upper pier at the time of the accident?

A. That I can't tell.

17. Q. Have you any idea how deep it was.

A. I suppose it was six feet on the outside of the rock-pile, and may be more. It was three or four feet all around the pier; that
636 is, the wood-work or cribbing. I mean the wood-work standing on the rock-pile.

18. Q. How high is the rock-pile?

A. I suppose it is 5 or 6 feet.

19. Then, at the base of the rock-pile the water must have been from ten to twelve feet deep at the time of the accident?

A. No; I think it was about six feet deep outside of the rock-pile.

20. Q. You say that the rock-pile is 5 or 6 feet high, and that the water at its base was about six feet deep, and that the water around the wood-work of the pier standing on the rock-pile was 3 or 4 feet deep, do I understand you right?

A. You do. But that timber—the bottom-timbers of the pier—is let down into the rock-pile three or four feet. The original rock-pile, if the pier had been away at the time of the collision, would have been out of water.

21. Q. How high up on the wood-work of the pier above the rock-pile did the water mark at the time of the accident?

637 A. I think I said before three or four feet.

22. Q. At the time of the accident did you have a raft lying in front of your mill?

A. No, sir; only a few logs in the boom. If I had a raft there they could not have got in.

23. Q. Have not boats come in below the upper pier and landed at the shore between the upper pier and the bank of the river within the last six weeks?

A. I never saw a steamboat there.

24. Have not the Cricket and the Prescott, of one of which boats H. Gillaspie is capt., and of the other Chas. Gillaspie is capt., frequently landed between the piers and the shore, or between a line drawn between two piers and the shore, both this season and last season?

A. I have never seen the Prescott land there yet. They coulden't land there this season, because I have a boom from one pier to
638 the other, and most of the summer have had a raft of logs lying there between the piers, and part of them are there yet; and last summer we had a raft of sawed-lumber lying there that projected out thirty feet at least outside of the piers, and reached from the upper pier nearly to the lower one.

25. Q. Have not your rafts projected out further from the shore since your piers were built than they did before, as a general thing?

A. No, sir; there is nothing to make them. We put them in until they strike the ground.

26. Q. Do you mean to say that your rafts, as a general thing, project out into the river beyond the piers?

A. They do.

27. Q. How far?

A. From thirty to sixty feet.

28. Q. How deep is the water thirty and sixty feet out into the stream from the piers?

639 A. I do not know. It would depend on the stage of the water.

29. Q. How deep would it be at a high stage of water?

A. At a high stage of water it would be thirty-five feet deep.

30. Q. How deep would it be at a low stage of water?

A. Twenty or twenty-five less.

31. Q. Can you tell how deep the water was on the gravel-bar above the piers at the time of the accident to the Jack Reaney?

A. I think it was dry about 100 feet or more from the bluff-bank, and out for 200 feet. I don't think it was three feet deep.

33. Q. How far is the point of the gravel-bar from the bluff-bank?

A. It is over 300 feet; it gets dry that far with no water on it whatever.

34. Q. Is not the bluff-bank at that gravel-bar as far back as the railroad bridge?

A. No, sir.

640 35. Q. Does not the gravel-bar extend as far back as the railroad bridge?

A. Of course it does, but that is not the bluff-bank.

36. Q. Is not the gravel-bar covered with water at the present time to a considerable distance back from the point of the gravel-bar?

A. It is, but not very deep.

37. Q. Is it not a flat bar?

A. It is not what I call a flat bar.

38. Q. Is not the present a low stage of water?

A. No, sir; not a very low.

39. Q. How much above a low stage of water?

A. About three feet, as near as I can judge.

40. Did you measure the depth of the water on the ground-bar at time of the accident?

A. I did not.

41. Q. Do not boats, in passing down by the gravel-bar, pass down by the piers, and make the crossing to the Ill's shore below the piers?

641 A. Boats coming down the river come along down the shore till they get down just above the gravel-bar. Then they turn out toward the Ill's shore, running toward the Ill's shore until they pass that bar, and then angle off, some more, some less, toward the Ill's shore. They have some 600 or 700 feet of water in width to run in; that is, when water is low or a medium stage as it is now.

42. Q. Is there not a sand-bar out in front of the gravel-bar, and extending as far down as the upper pier?

A. There is a sand-bar over next the island.

43. Q. Does it not extend down as far as the upper point?

A. I don't know how far it extends down.

44. Q. Has it not been increasing in length down the river every year for the last seven years?

A. No, sir.

45. How far is the said sand-bar out into the stream from
642 the said gravel-bar?

A. I do not know.

46. Is not the current of the river very swift at the point of the gravel-bar?

A. Yes, sir; it is.

47. Q. How far out into the current did you throw the things that you say you threw into the current of the river, which floated down by the piers?

A. I suppose about ten feet.

48. Q. How far out was the skiff that you saw floating?

A. It was out in the stream some distance, perhaps 100 feet. The wind would catch a skiff and blow it in.

49. Was not the Jack Reaney lying in the bottom of the river when you first saw her?

A. One end they had run upon shore, the good end; the broken end was out in the water about 8 feet deep, and when the water raised she floated down stream, I should think half the length of herself.

643 50. Q. Have you ever been a ship-carpenter, or had any experience in raising and repairing barges?

A. No, sir.

51. Q. Have you not kept rafts just below and unde' the gravel-bar spoken of?

A. We always do through the summer.

52. You speak in your direct examination of a gravel-bar below your saw-mill. How far is that below your saw-mill?

A. From the upper pier it is 600 or 800 feet, and projects out into the river as far or further than the upper gravel-bar, for I have had considerable trouble in getting logs back up the river that broke loose in the night by the waves of steamboats.

53. Q. Have you been in the habit of keeping lights on your rafts?

A. We have.

54. Q. Have you always done so?

A. When they are lying in a dangerous position, and are likely
644 to be struck, we do. When they do not lay in a dangerous position, we do not.

55. Q. Council for respondent have asked you as to the character and amount of the mill-improvements, machinery, &c. What is the value of the mill-buildings?

A. The mill-buildings are not very valuable. I suppose they would cost in the neighborhood of $10,000.

56. Q. What is the value of the machinery in them?

A. I suppose the machinery did not cost less than $50,000.

57. Q. What are the dimensions of your building?

A. We have four mill-buildings. The upper saw-mill is about 60 feet wide and about 120 feet long—I am guessing at that; and there is a brick building about 30 by 40 feet, and there is another building about 60 by 120 feet; and another brick building about 20 by 30 feet; a frame building, three stories high. I believe it is 40 by 60 feet; brick building 25 by 30 feet; another mill-building 40 by about 100 feet. That
645 takes all the mill-buildings.

60. Q. Do you manufacture lumber in all of these buildings?

Ans. No, sir. Three of them are boiler-houses and attached to the mill.

Re-examination by respondent:

1. Q. In your cross-examination you said the Reaney had floated down in half her length when the water rose. What, if anything, prevented her from continuing floating down the river?

A. She was tied fast with a line to a post on the shore; but afterwards they took the lines off and abandoned her.

3. Q. When they took the lines off was the water deep enough to float her?

A. No.

4. Q. Did you ever, with a rule or other measure, measure the water 20 or 30 feet out from the upper pier?

A. Do not believe I did.

646 5. Q. Then, when you were giving estimates of depth of water on the outside of that pier towards the channel, was not that simply your judgment without being based on actual measurement?

A. It was all guess-work, except the depth of the water around that pier on top of the stone.

6. Q. Do you remember of the little steamer Cricket or Prescott coming, either of them, in front of your mills to get brick or any kind of lumber?

A. I did not see them there. They might have come in when I was away.

JOHN C. ATLEE.

Subscribed and sworn to before me this 27 day of August, 1872.

D. T. MILLER, J'R,
Commissioner.

647 B. F. ANDERSON, witness of lawful age produced by respondent, being first duly sworn, testifies as follows:

I reside in F't Madison. I am 57 years old; business, carpenter by trade, and I have worked at ship-carpenter business; worked four or five years at ship-carpenter business altogether on the Mississippi at S't Louis, Montrose, and other points on the Mississippi.

Questions by respondent:

1st Q. Did you work any on the Jack Reaney as ship-carpenter after she collided on Atlee's pier?

A. Yes, sir.

2. Q. Where did you work *at* on her?

A. Just below Atlee's mill, on the bank of the Mississippi River.

3. Q. How long did you work on her in repairing her?

A. As near as I can recollect, it was about 18 or 20 days.

648 4. Q. Were you present when she was raised; or did you assist in raising her?

A. She was raised on blocks when I got there.

5. Q. Have you worked much on other barges and lighters?

A. Yes, sir. I have worked on both of them.

6. Q. What part of the repairs did you assist in doing?

A. Repairing the break the' was in that barge. There was a break on the shore side, somewhere near the midship. The break seemed to be all in one place; broke clear through the side very near all the outside planking, and the effects of the break extended, perhaps, 15 o' 20 feet aft; but the floor-plank or bottom was not much injured. Some 10 or 15 floor-timbers were broke.

7. Q. Was the keel of the Jack Reaney injured?

A. It was not.

8. Q. Was the kel'on injured?

A. No, sir. It was loose. It seemed where the boat run on the
649 rocks that it pressed the center up in the middle of the boat; sprung the keel. It threw it off its splice, but did not break it. We put on our iron-clamps, drew it back, and spiked it as it was before.

9. Q. Please explain what the keel of a barge is.

A. I understand it to be a plank that goes right under the kelson, fore and aft, lengthwise of the boat.

10. Q. Which is the first timber on which the building of a boat commences.

A. The keel.

11. What is the first thing nailed to the keel?

A. The floor, or bottom plank.

12. Q. Explain what the kelson is.

A. It is a piece of timber running fore and aft on the inside in the center of the boat, running lengthwise over the floor-timbers right over the keel.

13. Q. Then, if I understand you, the injury to the boat was all to the one side of the keel and not the keel itself?

A. That is so.

650 14. Q. I want your opinion, as a ship-carpenter, on this question, which please carefully consider before you answer. Could or could not the injury to the barge by the colliding which you have described have been repaired with new material, so as to have made her as staunch and good after such repair should have been made as the barge was in before the injury?

A. I think she could. I know of no reason why she could not with new material.

15. Q. Did you notice the dun'age where the bulk grain was intended to have been kept?

A. I noticed the dun'age that had been taken off the boat.

16. Q. How much of the inside of the barge had dun'age on it.

A. I think, from the appearance, the whole of the inside of the barge was lined save over head. The dun'age is the inside lining in
651 boats intended to carry grain in bulk. The dun'age was made of matched pine an inch thick.

17. Q. How much in length and breadth of the dun'age was injured by the colliding with the piers?

A. I think there was about 50 feet or 60 feet that ought to have come off of one side in length, and about 30 or 40 feet off of the bottom in length.

18. Q. Will you now state an estimate of about the number of square feet that was injured altogether?

A. As near as I can tell, probably 1,200 or 1,400 *hundred* feet would have to be taken off and replaced.

19. Q. What is it worth to take off and replace 1,200 or 1,400 feet of dun'age—I mean the cost both for the work and the lumber?

A. I should think, in case there was that much to come off and replace, it would cost fifty or fifty-five dollars. The lumber would cost about $36, prepaired at the p'aning-mill, and it would be worth $12 or $15 to put it on.

652 20. Q. Did you notice what was the condition of the old dun'age on the boat that was taken off after the collision?

A. I do.

21. Q. What was its condition as to soundness or unsoundness?

A. It was rather rotten in some places. It was rotten through.

22. Q. What was its character generally as to good or bad?

A. It was very rotten. There was some good in it, but not fit to put back again.

23. Q. Did you get any portion of the dun'age after it was removed; and, if you did, what was the character of the lumber as to soundness or unsoundness?

A. I got a thousand or fifteen hundred feet of it in pieces. It was not good; most of it was rotten. I was going to use it for fire-wood. The superintendent, Mr. Kinear, gave it to me. We had an unsatisfied claim of four of five dollars, and I think Mr. Kinear gave the lumber to me to satisfy my claim.

653 24. Q. What kind of roofing was on the barge?

A. It was a roof made out of match-flooring, in the shape of a house-roof—steep, those roofs. I don't see them. There was only one piece that was standing out on the levee. The others, I suppose, had been taken apart. I saw the 'recks of them on the shore where they had been taken apart.

25. Q. What was the character of that portion of the roof that you saw as to goodness or badness?

A. It appeared to be good.

26. Q. Could or could not the roof have been replaced on the boat, if its owner or owners desired to so have done?

A. If all parts of the roof had have been like that one I spoke of, they might *may* been.

27. Q. What was the necessity, if any, in taking all of the dun'age out of that barge?

A. I don't see any necessity for taking it out, unless it was to clean the barge out.

654 28. Q. Do you know what became of the balance of the dun'age that you did not get?

(Objected to by libel'ant as immaterial.)

A. They took considerable of it away with them; the balance of it I took. I could not tell how much *dam*age Mr. Kinnear took away with him. He took most all of that what was good.

29. Q. About how much in proportion of all the dun'age in the barge was insured or broken by the colliding?

A. It might have been one-fourth of it that you would have to take off to repair the break.

30. Q. Had there been a cabin on that barge?

A. I suppose there had. There was piece of one on the shore.

31. Q. Do you know what became of that cabin, or what did you hear Mr. Kin'ear say in reference to it?

(Part of question objected to by libel'ant, which relates to what Mr. Kinnear said.)

A. I understood Mr. Kinnear to say that he was going to take it away with him.

655 32. Q. Who worked on the barge with you?

A. W'm Wright, of Montrose, worked on the boat some several days. Mr. Wolverton then came. I don't reccollect how many days we had worked when Wolverton came.

33. Q. Who employed you to work on the barge, and what did he say when he employed you?

A. Mr. Kinnear employed me to work on the barge. He asked me who I could get to help me. I told him I would like for to get Mr.

Wright, and he got Mr. Wright. I did not know Mr. Wolvertson was coming until he came to the boat.

34. Q. Who were the only persons who worked as carpenters on the boat in its repairs when you worked there?

A. I believe there was none but Wright, Wolvertson, and myself. There was some laborers the' holding bourds, &c. Harrison West was there helping to keel up the boat. He was there as a sort of a superintendent.

656 35. Q. Is Harrison West a ship-carpenter by trade?

A. Not to my knowledge.

36. Q. How long have you known him?

A. I have known him for 15 or 16 years.

37. Q. If the roof and cabin had been left remain on said barge and all the dun'age left in her except what was injured, and new dun'age been put in and new siding and timbers in place of those broken and injured by the collision, would or would not the boat thus repaired have been as good for practicle service, and worth as much in money, as she was before the injury?

(Objected to by libelant as *injury.*)

A. I don't see why she would be as good as before the injury, if she was well repaired; and I think she would be worth as much in money.

38. Q. What do you think was the actual cash value of that boat before the injury, taking into consideration your knowledge of her defective damages, etc.

657 A. I would not like to put an estimate on the barge. There are others more competent on that subject than I am.

39. Q. Was there or was there not parts of that barge which required repairing besides the part that was injured by the collision?

A. There was two breaks in that barge forward of the main break that wanted repairs, and they looked like old breaks. Mr. Wolvertson repaired those breaks. He worked on those two old breaks most of the time he was working at the barge. I don't know whether they were broken on the pier or not. They were forward of the main break on the same side: one 25 or 30 feet forward of the main break, and the other one, on the same side up in the bow—it might have been 50 feet from the main break.

558 40. Q. Why did you judge that these were old breaks?

A. I judge from the appearance of the breaks. They looked older than the others. That was my impression at the time.

41. Q. Could the barge have been used for transporting grain with those old breaks? What I want to know is whether the old breaks were of the character to create breakage.

A. I think the barge could have been used for transporting grain, but, I think, from the way the boat laid, it opened one of the forward joints and make a leakage.

42. Q. What do think was the reasonable cost or value for the repairs of those old injuries, including labor and material?

(Objected to by libelant as incompetent.)

A. As near an estimate as I can place upon it would be twenty-five or thirty dollars.

659 43. Q. What do you think would have been reasonable worth to have raised the boat as she was raised, and to have repaired her dun'age and sides, from the injury occasioned by the pier, leaving her a barge for bulk grain, as she was before the injury, and not taking out of her any of her uninjured dun'age, or other uninjured material?

A. I prefer not to state what would be the probable cost of raising

her, but I will state the cost of the work, because I had nothing to do in raising her. In regard to the materials, I don't know what it would cost. I did not measure it. In regard to the carpenter-work on the boat, I think I can give a very fair estimate, from the time that we were at work. I think the carpenter-work would amount to $150 or $160. I judge from that by the time I worked myself. I worked all of the time the barge was there.

660 44. Q. Do you know why the roof was taken from the barge, the dun'age taken out of the barge, and the cabin taken off of the barge, from anything Mr. Kinnear said?

A. I don't.

45. Q. Do you yourself know of any good reason for the dun'age taken out of the boat, the roof taken off of the boat, &c.?

(Objected to by libelant as leading and immaterial.)

A. I know of no good reason, except so far as we had to take it out to repair the break.

46. Q. If the water had been high enough to have floated this barge where she lay when you worked upon her, could she or could she not, as you first found her, have been floated to the ways at Montrose to be put upon them for repairs?

(Objected to by libelant as leading and incompetent.)

A. It is my opinion that she might have been floated in the condition she was in, providing there was good water.

661 47. Q. Do you know whether a barge or lighter, when a hole is knocked in her, and she fills with water, will float if she has no load in her? Give your information on that subject.

A. I believe she will float.

Cross-examination by libelant:

1. Q. When did you first commence working?

A. My recollection is it was some time last summer. I cannot remember exactly.

2. Q. Was it as late as Aug't?

A. It might have been. It was very hot weather at the time.

3. Q. Had the barge been raised at the time you commenced working on her?

A. Yes, sir.

4. Q. Had she been bulk-headed?

A. No, sir.

5. Q. How deep was the water about her at the time you commenced working on her?

A. When we commenced working on her it was probably knee-
662 deep. On the outside part of the way she was out of the water altogether.

6. Q. How deep was the water in which she sunk?

A. I don't know how deep the water was. I was not there when she sank.

7. Q. Could the repairs have been made upon her at F't Madison before the water receded so as to leave that part of the barge which was injured, on dry land?

A. No, sir; they could not have been made until the water left.

8. Q. Had any repairs been made on the barge when you commenced working on her?

A. None.

9. Q. Did you make any of the repairs upon her which were made at Montrose?

A. I didn't work at Montrose at all.

10. Q. Do you know, of your own knowledge, what repairs were made upon her at Montrose?

663 A. I don't know what repairs were made there. I saw the barge afterwards and discovered that the deck had been repaired. I saw her from the bank of the river at F't Madison. I saw them corking the deck from the bank of the river.

11. Q. Have you had any experience in raising, floating, and running barges?

A. No, sir,

12. Q. You remember distinctly exactly what parts and all the parts of the barge that were repaired at this distance of time?

A. I don't know of any except what I have stated heretofore.

13. Q. Were any of her knuckles injured?

A. I don't know of any except the one I spoke of in the fore part, which I spoke of as an old break, as I supposed it was.

14. Q. Was there a log-chain on the barge when you commenced working on her?

A. No, sir.

664 17. Q. Do you know whether or not the dun'age which was taken off was any part of it used in repairing the barge at Montrose?

A. Not to my knowledge. I don't think there was any taken to Montrose.

18. Q. Was not the barge badly broken and stove in for 20 feet in length between the bow of the barge and the midships?

A. No, I don't think it was 20 feet. We had to take plank off to get in long plank to repair the break. It would not do just to repair the hole. We had to let long plank run over each side of the break.

19. Q. *Were* not her deck stove in?

A. Yes, sir.

20. Q. Was not her bottom stove in?

A. A short distance, probable. I don't think the 1st plank at the bottom was injured, but the lick on the knuckle where it struck the pier, broke some 10 or 13 timbers—floor-timbers.

665 21. Q. How long had the barge been lying in the water at the time you commenced working on her?

A. I don't know.

22. Q. Had she not apparently been lying in the water for several months?

A. She might have been; I think so from the appearance of her.

23. Q. What effect would the water *of* had on her dun'age made of pine lumber?

A. It might *of* had some effect on the portion under the water. The principle places rotted in the lumber was where it crossed the timbers.

24. Q. What did you charge per day for your services?

A. Three dollars.

25. Q. What are you working at now?

A. I am building houses, carpentering, &c.

26. Q. Are you not a house-carpenter by trade?

A. Yes, sir.

27. Q. Who are you working for now?

A. I am framing a house for a gentleman in the country.

666 Re-examination by respondent:

1st Q. If the accident had not happened to the Jack Reaney, how long would it have been before the damage that was in it should

have been replaced with good material for her proper use as a freight-boat?

A. Oh, I don't know; it might have been patched up to last some little time.

2nd Q. If there had been ways near where the boat lay when you worked upon it as there was at Montrose, could not the boat have been drawn out there and repaired as well as at Montrose?

A. If there had been ways here it could have been drawn out here as well as at Montrose.

B. F. ANDERSON,

Fees for two days, $3.00; paid by respondent.

Subscribed and sworn to before me this 28th day of Aug'st, 1872.

D. F. MILLER, J'R,
Commissioner.

667 JAMES W. CAMPBELL, a witness of lawful age, produced by respondent, being duly sworn, testifies as follows:

My name, James W. Campbell; my age, 47; reside in F't Madison, Iowa. I commenced being a river-man in 1844, on the Upper Mississippi, and was continually on the river during navigation, with the exception of 1859, from 1844 until November, 1871. The greater portion of my time on the river was engaged in piloting and commanding boats. Between piloting and commanding, I have been on the following boats: The steamboat Mermaid, Sarahan, Tempest, Falchon, Montauk, Dubuque, Sahanden, Minnesota, Hindoo, Envoy, Ba'ger State, Henry Clay, City Belle, Kate Castle, Flora, Fannie Harris, Jennie Whipple, New Boston, Keithsburg, Rock Island. I have been a license' pilot for many years, since 1844. With the exception of one
668 year as above stated, I have been constantly on the river at points between St. Louis and St. Paul. Eight years, or since 1863, I have been up and down on alternate days of navigation from Keokuk to Rock Island. A great portion of our time we terminated at the union warehouse in the lower part of the city of F't Madison. I am acquainted with the pier in front of Atlee's mill.

1st. Q. Were you acquainted with the pile of rocks which lay where that pier is erected which were put there by Atlee the year before the pier was erected?

Ans. Yes.

Q. 2. Are you acquainted with the gravel-bar or delta at the mouth of French Creek, above Atlee's mill?

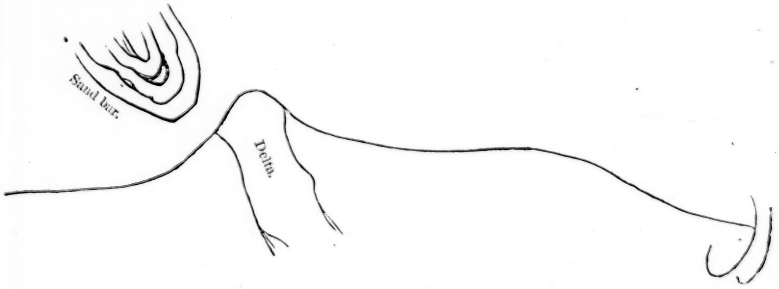
Answer. I am.

3. Q. Will you now please explain fully, and in your own way, which
669 way the current and channel sets after it passes the point of the bar at the mouth of French Creek, and how the current or channel is effected, if any, by sand-bars in the vicinity of said gravel point, and how, if any, the navigation is interfered with or obstructed by the upper pier at Atlee's mill?

A. Immediately above this delta the shore for three or four hundred yards is in a crescent shape. The channel follows the shore to the terminus of the delta formed by debris from French Creek; from that point the channel runs at an angle of 30 to 33 degrees from the main shore opposite upper pier. The upper pier I would judge to be fifteen feet from the shore. Immediately along the shore, at or about the pier, there are nigger-heads or boulders. Those boulders extend from
670 the upper pier down below the Park-house. I have struck the same

with boats that I have been on; was always taught or instructed by Isaiah N. Wagner, pilot, to avoid the shore from a point near the upper pier to a point near or opposite the Park house. I do not consider the upper pier to be any more obstruction to the navigation of the Mississippi River than the pier or dock at Muscatine, Lacros'ee, Fountain City, Hudson, and several other places. I judge the channel to be at a point oppsite the pier from 350 to 400 feet wide from the shore. At the delta I suppose the channel to be about 150 feet wide. The bar comes in near. There is a bar in front of the pier making out from the Ill's shore. The bar at the point of the delta runs at an angle of about forty degrees with a parallel line a little above the point of the delta.

I mark here a diagram of the delta and terminus of a bar or
671 reef opposite the delta.



4. Q. You spoke of the pier or dock at Muscatine, Fountain City, Le Crosse, &c., &c. Will you please state for what purpose those piers or docks were built, and who built them?

(Objected to by libelant as immaterial.)

A. They were built for the convenience of steamboats. The one at Muscatine was built by the Northern Line Packet Company. At La Cros'e's there are two, one built by a railroad company, and one by city corporation. At Fountain City the docks were built by individuals to induce the boats to land there.

5. Q. How near do boats usually pass in front of the upper pier
672 at a low or ordinary stage of water?

A. From two hundred to two hundred and fifty feet.

6. Q. At a low or ordinary stage of water, which way does the current after it shoots pass the point of the gravel-bar at the mouth of French Creek?

A. Commencing at the point of the parallel line of the shore it continues to run on in that direction till near one-third of the distance of the width of the main river below or opposite the Park House; thence towards the Ill's shore at an angle of about forty-five degrees until it strike' an island on toward the Ill's shore.

7. Q. You say that the steamers usually run from 200 to 250 feet from the upper pier. Will you please explain how near such running is to the main channel, or in what part of the channel?

A. I consider it something near the center of the channel.

673 8. Q. Have you any knowledge of rafts or saw-logs having been kept in front of Atlee's mill, or in the vicinity of the upper

pier? If yea, state who has had the logs there and how they have been kept there, according to your best recollection.

A. I have known of rafts there for the last seven or eight years. They were kept there by Atlees. I have seen him working among them.

9. Q. State whether you have or have not known steamers in passing up and down the river to pass over the very spots where the piers in front of Atlee's mill stands?

A. I have known them to in high water, but not in low water.

10. Q. Have you known any such passes since Atlee built his mills and kept his rafts in front of his mills.

(Objected to as leading.)

A. I have not.

674 11. Q. At what time was it, with reference to the stage of water, when you saw a boat or boats pass over the spot where the upper pier now stands?

A. As near as I can remember, it was in June, 1851, in high water.

12. Q. Do you know, from personal experience and observation, whether a barge, when injured, so as to let her fill with water, will still float if she was not a load in her? If you please, state your experience and observation in the premises.

(Objected to by libelant as leading. Question withdrawn by respondent.)

12. Q. Suppose a barge should, by collision, have a large portion of her side smashed in, and she should fill with water, would she sink, or would she float in deep water, provided she has no load in her?

A. With proper fastenings, that is, toe-lines, she will float. In

675 Oct., 1857, I sunk the barge Rob Roy in tow by the steamboat Henry Clay about two miles below Brownsville, Minnesota, having torn twenty-five feet or thereabouts of the whole side of the barge out; same caused by coming in collision with two prongs of stumps sticking out from the bank of the river; towed the barge from that point down below the point of the bar, thence across the river into the head of Coon Slough. Said barge had about two ton and a half of cannon-balls as freight in her at the time.

13. Do you know, from personal observation and experience, whether, when a side of a boat is smashed in, (say as badly as you say the Rob Roy was,) *whether* ship-carpenter can repair or cannot repair her to be as staunch and as before the accident?

(Objected to by libellant as leading and suggesting the answer to the witness.)

676 A. An old boat cannot be repaired to be as good. With an new one there is not so much difference.

14. Q. Do you know what is the character of B. F. Anderson as a ship-carpenter? If yea, state what it is.

A. Mr. Anderson is a good ship-carpenter. Mr. Anderson worked for me several years as a ship-carpenter. I know of him to have been employed in working on one or two of the gunboats built in St. Louis —built by Capt. Eddes. Mr. Anderson left me, at two different times, in St. Louis, to go to work on the ways and docks.

15. Do you know Harrison West, of Montrose; and, if yea, how long have you known him?

A. I know him; think I have been acquainted with him for seven or eight years.

16. Q. What is his character as a ship-carpenter, or capacity to work on repair of boats?

A. I have no knowledge*ing* of him being a ship-carpenter.

677 Cross-examination by libelant:

1st. Q. Has not Harrison West been engaged for many years in and about raising and repairing of boats, barges, and lighters, and in other matters connected with the navigation of rivers?

A. I have never know' him to be engaged in raising but one barge, which was lying sunk near Atlee's mill. I have known him to have been engaged in the capacity of supercargo of lighters, at Montrose, owned by different steamboats, owners, and companies; also, to have been engaged in contracting for taking lig'ters over the rapids.

2. Q. What kind of boots have you been on for the last six or seven years?

A. Rapids Packet Co., Northern Line Packet Co.

3. Q. Have you ever had any practicle experience in raising barges?

A. I have raised steamboats, but not barges.

678 4. Q. Did you ever superintend the raising of steamboats?

A. Yes, sir.

5. Q. How many?

A. Two.

6. Q. When a boat or barge is sunk by collision, is there not always a certain amount of injury arising to a boat or barge from being sunken beside the injury done by the collision.

A. There is.

7. Q. You speak of rafts in front of Atlee's mill for the last several years. Have there not been times during that period when there have been very few logs in front of his mill?

A. This spring, at the opening of navigation, there was none.

8. Q. Have there not been many times during the last six or seven years when there were very few logs in front of Atlee's mill?

A. I think not with the exception of early in the spring.

9. Q. Have not his raft' varied greatly in size?

679 A. They have.

10. Q. Have not boats landed at the shore by his mill inside where the piers are with' the last few years?

A. I have seen none land there.

11. Q. Is it not the custom when boats, rafts, barges, & lighters are moored to the shore of the rive' in the night-time to keep lights on them?

12. Q. It is not with empty barges; lights are never kept on them. So far as logs are concerned, some of them do keep lights, and some do not. Rafts, when running, always have lights.

13. Q. When rafts are moored to the shore in the night-time in a dangerous part of the river, is it not customary to keep lights on them?

A. They do.

14. Q. What is the present stage of water in the river at F't Madison?

A. I do not know; have not been aboard of a steamboat since last November.

15. Q. What is the depth of the water around the upper pier,

680 when the river is at a high stage?

16. Q. About how many feet deep is the water around the upper pier at an ordinary high stage of the river?

A. I never measured it; I can't say.

17. Q. How deep is it at a low stage around the pier?

A. I should judge the water to be of the depth of 20 inches on the inside, and I suppose about 3 feet on the outside; it may be more. I could not say positive; I never measured it. I was there when the piers were erected, and was called upon by the men at the time.

18. Q. How deep is it around that pier at an ordinary stage of water?

A. I suppose it is about 7 or 8 feet.

19. Q. How high is the pier?

A. I do not know.

20. Q. Is there not a sand-bar a little distance out from the
681 gravel-bar, extending down the river as far as the upper pier, or further?

A. There is.

21. Q. How far is the upper end of that sand-bar from the point of the gravel-bar?

A. I should judge before you get to shoal water, 350 feet.

22. Q. Do you mean to say that the upper end of that sand-bar, or the part of the sand-bar opposite the gravel-bar, is 350 feet from the point of the gravel-bar?

A. I say it is over three hundred and fifty feet. I went down and sounded it myself.

23. Q. How far down does that sand-bar run?

A. I presume the two run down from a mile to a mile and a half.

24. Q. How far is this sand-bar from the upper pier?

A. I judge it would be from 400 to 450 feet from the shore opposite the pier.

25. Q. Does the plat which you have had before you while giv-
682 ing your testimony in this case, handed you by council for respondent, drawn by E. H. Worrell, show that sand-bar?

A. It does not.

26. Q. Does it show the crescent shape or bend of the river above the gravel-bar?

A. Partly.

27. Q. What part of it?

A. The lower end.

28. Q. You say, in your direct examination, that you have struck nigger-heads or boulders, lying near the shore, at Atlee's mill, with boats. How far are these nigger-heads from shore?

A. From 10 to 20 feet; 30 feet in places.

29. Q. You speak of other piers and docks at different points on the river above here. Are they not properly docks made and used for public purposes?

A. They were made for steamboats to land at.

683 30. Q. Suppose a boat running from the point gravel-bar at an angle of 33 degrees in the river, how far would that take the boat out in the river—how far would that take a boat out in the river, at a point opposite the pier?

A. From 225 to 250 feet.

31. Q. Is it not more difficult to navigate steamboats without barges than with them?

A. I consider it easier to navigate and handle steamboats with barges than without them; single-rudder boats or boats with the wheels on the side.

32. Q. With a single barge, and the barges on the starboard side of the boat, does not the boat have a tendency to draw of' on the starboard side?

33. Q. What different positions are barges placed in on the side of a boat?

A. Sometimes the bow of the barge projects forward of the bow of steamboat 35 or 40 feet; then, if the barge is loaded, the boat

684 light, the barge pulls off to the right. When the barge is light and the boat light, bow of barge even or aft of bow of boat, it has but very little effect; it causes the boat to run steadier.

34. Q. Would a boat run steadier with only one barge?

A. She will on shoal water; in deep water it has but little effect.

Redirect examination by respondent:

1st Q. I know the Phil Sheridan and conside' her a very difficult boat to handle. I have not known boats, even in a high stage of water, to run over the gravel-bar for the last 9 or 10 years.

There are no lights kept on the piers and docks, I have heretofore mentioned, in the night-time.

Recross-examination by libelant:

685 1st Q. Do you intend to say that none of the piers on the river above this point have lights kept on them in the night?

(Question objected to by respondent, because respondent has not asked in reference to lights on piers in front of mills to which booms are attached.)

A. None of them have, only when persons come down to get on them for their business with boats.

2. Q. Did you ever pilot the steamboat Phil Sheridan?

A. I never did.

JAMES W. CAMPBELL.

Witness-fees, 70 miles each way, $7.00; 2 days, $3.00.
Witness-fees paid by respondent.
Subscribed and sworn to before me this 28th day of August, 1872.

D. F. MILLER, JR.,
Commissioner.

686 AUGUST 29TH, 1872.

A. B. WOODWARD, witness, of lawful age, being first duly sworn testifies as follows, to wit:

My name is A. B. Woodward. My age will be 36 years next month. I reside with my family in Fort Madison, Iowa; and have resided here about two years. My business and occupation is that of a raft-pilot from Reeds' landing in Minnesota, to St. Louis, Missouri, on the Mississippi. I have a pilot's license on the Mississippi between Reeds' landing on the Mississippi and St. Louis. I sometimes pilot boats which tow rafts, and sometimes pilot rafts which float without tow-boats.

Questions by respondent:

1. Q. Are you acquainted with the location of the channel
687 of the river in front of Atlee's mill at Fort Madison? and, if yea, state how it runs.

Ans. Yes, sir; I am acquainted with the channel. The channel runs down the river starting from the Madison levee, running two hundred yards out from the levee, and runs down a little ways and then back to the shore a little below the Union ware-house; then it crosses over quartering down the river two hundred yards from the upper pier. It leaves the shore at or a little above the gravel-bar and goes out into the river one hundred yards out from the pier.

Cross-examination by libelant:

Ques. 1. Do I understand you that the channel of the river is one hundred yards from the upper pier?

An. Yes, sir.

688 Ques. 2. How broad is the channel there?

Ans. Two hundred yards.

Ques. 3. If a boat should pass over the point of the gravel-bar might it not hit the pier?

Ans. It would.

Ques. 4. Is there not a sand-bar in the river commencing about opposite the point of the gravel-bar, and extending as far down as the upper pier?

Ans. No, sir; it does not extend that far down.

Ques. 5. How far down does it extend?

Ans. Within a hundred yards of the line of the pier.

6. Q. How deep is the water around the upper pier?

A. I don't know as I can tell you exactly. After you drop over the upper sand-bar, of course that is the deepest water running quartering out into the river. I cannot say that I know correctly how deep the water is around the upper pier.

689 7. Q. Are you very familiar with the depth of the water in that vicinity?

A. Yes, sir.

8. Q. If you are familiar with it, why can't you tell me the depth?

A. I think I can come very near it, but I would not be very certain.

9. Q. Come as near to it as you can?

A. I should think it to be from four feet to three feet about the pier at this stage of water, that is as near as I can tell.

10. Q. What stage of water is this?

A. This is not what we call a very low stage of water; it is what we consider an ordinary stage of water.

11. How deep is the water around that pier at a low stage of water?

A. I don't think there can be over two feet.

12. Q. Then the difference between a low stage of water and an ordinary stage of water is between one and two feet?

A. Between two and four feet.

690 13. Q. What is the difference between a low stage of water and a high stage of water?

A. Eight feet.

14. Q. What is the depth of the water around that upper pier at a high stage of water?

A. I suppose it is ten feet.

15. Q. What is the height of the pier?

A. I can't say that I know.

16. Q. Have you ever run boats or rafts over the spot where that upper pier stands?

A. No, sir.

17. Q. Have you ever run boats or rafts near to that pier?

A. I have rafts, but not boats in windy weather.

18. Q. What was the effect of the wind?

A. It was, if side wind, to drive a raft to shore. The wind will drive a raft to shore anywhere.

19. Q. Did you ever hit that pier with a raft?

A. I do not *ever* recollect of ever hitting it.

691 20. Q. Perhaps I can assist your memory. Were you not once on a raft with R. B. Hatch, there, after being in tow of a boat when the raft you were on hit that pier?

A. I can't say that I remember of hitting that pier.

22. Q. Did you not rub against it or glance off of it?

A. I don't recollect of ever rubbing it. I have been pretty close to it at times.

23. Q. Suppose a raft to be running rather close to the pier above it, the wind blowing on shore would it not be more dangerous to navigate that water with the pier there than if the pier were not there?

A. Yes, sir; I presume it would. Put a pier any where, and with the side wind and you could navigate better without it.

24. Q. Is it not customary when rafts, boats, barges, &c., are moored to the shore in the night-time to keep lights on them?

692 A. It is when they are lying ashore.

25. Q. What is the effect of the sand-bar, which lays out in the river from the pier, upon the current?

A. The effect of the bar is, that when the water drops over it, has the effect to draw the water out into the river towards the Ill's shore.

26. Q. What is the effect of that bar on the water running over it on the western or Iowa side of that bar?

A. On the western or Iowa side of that bar it has a tendency to drive some portion of that water against the gravel-bar.

27. Q. Has not that sand-bar been increasing in length down the river for the last several years?

A. Yes, sir; it has been dropping down. It is the nature of all bars to drop down until they force a change of channel.

28. Q. How near do you run to the gravel-bar?

A. We run within fifty feet of it, that is the upper part of it.

693 29. Q. Is not the water at the point of the gravel-bar rather deep.

A. Yes, sir; good water up to the gravel-bar.

30. Q. Is there not a deep bend in the shore bank river just above the gravel-bar making the shore at that point, and for some distance above, in the form of a crescent?

A. Yes, sir; it circles in a bend and goes out above the gravel-bar.

31 Q. You are a raft-pilot, are you not?

A. Yes, sir.

32. Are you a steamboat-pilot?

A. I claim to be a tow-boat pilot as I have got license for such.

33. What do you tow with your boats?

A. I tow rafts, mostly; other things if we are called on to do so by the company.

34. Q. Have you ever piloted large steamboats?

A. Nothing larger than ordinary tow-boats.

35. Q. How long have you been piloting rafts by F't Madison?

A. I have been piloting rafts by F't Madison since 1860.

694 Redirect examination by respondent:

Mr. Rice asked you about the depth of the water around the pier and the height*h* of the pier. Have you ever measured either so as to know, the depth of the water or the height*h* of the pier?

A. No, sir; I have not.

2. Q. Will you please tell the different widths of log-rafts from the narrowest-width raft up to the highest-width raft as they usually are when floated or towed down the Mississippi River?

A. There are in width from 160 to 200 feet.

3. Q. In an ordinary stage of water, how far will a raft float out from Atlee's upper pier, when not interfeared with by wind—I mean after you have safely passed outside the gravel-bar?

A. In an ordinary stage of water it would pass fifty feet from

695 the upper pier.

4. Q. I ask you as a pilot or an expert, whether you have found that upper pier any obstruction to the navigation of the river?

(Objected to by libelant as incompetent and immaterial.)

A. I have never found it any obstruction to the channel of the river. I don't consider it in the channel.

Recross-examination by libelant:

1st. Q. In high water do not rafts and everything floating on the river draw to shore?

A. On a raising river they have a tendency to draw to shore, but at no other time, unless it is places where the water sets in.

2. Q. The water sets in to the Iowa shore above the gravel-bar, does it not?

A. Yes, sir.

3. Q. Does not the river flow over the gravel-bar at a high stage of the river?

A. Yes, sir.

696 4. Q. Suppose a raft to be in the river above the gravel-bar a crossing down, and the gravel-bar bare and above water, would not the raft hit the gravel bar, with nobody on the raft to guide it?

(Objected to since since he does not ask whether the raft had any one on to——.)

I don't think she would hit the gravel-bar unless there was some wind.

5. Q. Did you not just say in conversation that in such case the raft would hit the gravel-bar, swing around, and keep hitting the bank below?

A. Yes, sir; if she was against the shore, but you said she was out in the river.

6. Q. Suppose in the case above supposed, the was on the Iowa side of the channel in the river, how would it be then?

A. I don't think she would hit the bar unless some wind.

697 7. Q. Does not the channel of the river strike forcible against the gravel-bar, and has it not cut off the point of the gravel-bar and made it very steep and abrupt at that point?

A. The channel sets in very strong at the upper end of the gravel-bar and sets out at the lower end. I think the gravel-bar is as far out as I have noticed it for years.

8. Q. Suppose the raft to hit the gravel-bar, would it not swing around and keep hitting the bank below?

A. After she hit the gravel-bar I think that she would not hit the shore or bank of the river below without some wind, as the water draws out from there.

9. Q. I understood you to say, a few moments ago, although it is not down in your written testimony, that it would so hit the bank. Am I right in my understanding?

A. Not without some wind it would not, I don't think. I have always pulled out from there.

698 10. Q. Is not the general direction of the current of the Mississippi River at F't Madison, and for miles above, toward the Iowa shore?

A. I can't say that it is in fact; it makes crossings back and forth.

A. B. WOODWARD.

Witness-fees, $1.50, paid by respondent.

Subscribed and sworn to before me this 29th day of August, 1872.

D. F. MILLER, JR.,
Commissioner.

JAMES W. CAMPBELL recalled by respondent.

1st Q. I want your opinion, as an expert, whether that upper pier at Atlee's mill is or is not an obstruction to the navigation of the channel of the Mississippi River.

(Question objected to because witness was yesterday examined on the same subject-matter and his testimony closed, and as incompetent.)

699 A. I do not consider it as such.

2. Q. Do you know of piers for booms in front of saw-mills along the Mississippi River at other places besides at Atlee's mills?

(Objected for the same reason as above, and also for the reason the question is immaterial, this case having nothing to do with other piers, wherever they may be.)

A. Yes, sir.

3. Q. Do you know whether all of them, or any of them, keep lights on them at nights?

(Objected to for the same reasons as those given for to the last question.)

A. I never have seen lights on the piers at Burlington, Muscatine, Davenport, excepting at one time on the piers opposite a mill being erecting below Muscatine.

4. Q. Does or does not the safety of navigation require that a light should be kept on Atlee's piers with persons who know the river channel properly?

700 (Objected to for the same reasons as the last one, and as leading.)

A. I think not.

JAMES W. CAMPBELL.

Subscribed and sworn to before me this 29th day of Aug., 1872.

D. F. MILLER, JR.,
Commissioner.

E. J. WILSON, witness, of lawful age, being duly sworn, testifies as follows:

My name is E. J. Wilson. I am fifty-two years of age; reside in Ft. Madison, Iowa; business, dry-goods merchant; have done business in Front street, Ft. Madison, since 1837. Before 1849 I did business as a clerk for others, and since then I have been doing business as a merchant for myself. Front street is on the river in fron' of my store. From my store I can see down the river past the Atlee's mills. I can see about four miles down the river. I can also see several miles of the river.

701 1st. Q. Do you know the channel of the Mississippi River as shown by your observation of the navigation of steamboats, barges, and rafts in their passage in front of Ft. Madison and Atlee's mill? and, if you answer yea, then state the ordinary and usual route of such crafts within your long observations of them.

A. I do know the way the boats, rafts, &c., &c., run. Commencing at the steamboat landing, the channel runs near the Iowa shore until it reaches French Creek; there strikes across towards Ketchel Island, about two-thirds of the way; thence across to the Iowa shore, just below the Park House on the Iowa shore. That is one of the channels. The other channel crosses over and runs along to Ketchel's Island; that is, about two-thirds the way down the island, and continues along down. Both of the crossing' are made at the same point.

2. Q. About how far, as near as you can judge from your store-door—how

far do boats pass from the upper pier at Atlee's mill a-going down the river?

702 A. I should think about a hundred and fifty yards. I judge, looking from my store-door.

3. Q. Have you ever known steamboats to run close into the shore, say as close as the upper pier in front of Atlee's mill? and, if yea, state what stage of water, and how long ago.

(Objected to by libelant as leading.)

A. I don't remember of ever having a boat run there except when making landing there for fuel, &c.; there were small raft boats.

Cross-examination by libelant:

1st Q. How far is your place of business from the upper pier?

A. I think it is about half of a mile.

2. Q. How far below the steamboat landing is it?

A. It is five hundred and sixteen feet.

3. Q. Have you not always occupied the same place of business?

A. I have since 1849.

4. Q. Have you ever been a pilot as steamboat-man?

A. I have not.

703 5. Q. Do you consider yourself an expert in matters of river current and channels?

A. Yes, sir; I think I know that channel anyhouse. I know that channel that is used.

6. Q. How do you know where the channel is?

A. By daily observation. There is not a day hardly but what there are boats passing in navigation season.

7. Q. You say that boats after reaching the gravel-bar at Frenches Creek cross towards the island from the gravel-bar?

A. Yes, sir.

8. Q. You also say, do you, that boats cross over toward the Park house from the direction of the island?

A. After they get about two-thirds toward the island they cross back to the Iowa shore a little below the Park house.

9. Q. Is there a sand-bar out in the river from the point of the gravel-bar, and extending down the river a little distance?

A. I think there is.

10. 2. How far is that sand-bar from the gravel-bar?

704 A. All I can say is from the way the boats run. I am no pilot.

11. Q. How deep is the water around the upper pier at the different stages of the river?

A. I do not know.

E. G. WILSON.

Subscribed and sworn to before me this 29th day of August, 1872.

D. F. MILLER, *Commissioner.*

R. H. HEATH, witness, of lawful age, being duly sworn, testifies as follows:

1st Q. Mr. Heath, will you please look at the map or diagram which I herewith hand you, and on which I have written to designate it O P Q, and tell me, if you know, who made this map or diagram.

A. I made it myself.

2. Q. Who made the surveys on which it is based?

A. I made them, with assistance.

3. Q. You are, then, a practical surveyor?

705 Ans. I am.

4. Q. Is this diagram a correct map according to the survey of the Mississippi River in the vicinity of Atlee's mill, as made by you?

A. Yes, sir; and I file as a part of my evidence in this case.

5. Q. Can you give the time that you made that survey and the stage of the water?

A. Yes, I can. I made the survey on the 9th day of October, 1871, and it was very low water.

6. Q. The figures 750, near the mouth of French Creek, indicate, I suppose, the distance from the east side of the upper pier?

7. Q. Yes, sir.

8. Q. Have you recently made a survey of the navigable part of the Mississippi immediately in front of the gravel point of the sand-bar, made by French Creek, say from a point indicated on the map by a cross-mark near the said figures 750?

A. I have. I made it on the 13 or 14 of this month.

706 9. Q. How far out in a straight line across the river from that point did you find what might be called navigable water, say as much as ten feet at all stages?

A. As I understand it, 70 feet from that point would make navigable water at all stages.

10. Q. How far does deep water extend out from that point across the river, say as much as ten feet anywhere at the time you made the measurement?

A. It extends out in ten feet water for six hundred feet. In some places it is forty feet.

11. Q. Have you lately made a measurement of the deep navigable water in front of Atlee's upper pier; and, if yea, when did you do it?

A. I have made a measurement lately, and have made it about the thirteenth or fourteenth of this month.

707 12. Please now state how far out from that pier it is before you get into deep navigable water, say 8 or 10 feet deep?

A. It is seven feet and a half at the pier, and in less than no time, as soon as you can pull a skiff and make another measurement, it is over ten feet deep. It is over 10 feet after you get out 20 feet. I didn't use only a ten-foot measure. After I got deeper than that I did not sound, for that is more water than any boat draws.

13. Now tell me how far across the river, in front of said upper pier, you found a 10-foot measure of water.

A. It was about five hundred and sixty feet of water over ten feet deep out in the river opposite the upper pier. My sounding-pole was only 10 feet long. Consequently I cannot say how much deeper it is.

14. What was the depth of the water at the time you made this
708 measurement; was it high or low water, and was the sand-bar of French Creek covered with water?

A. The sand-bar was not covered with waters. You could see it on my diagram. The low water indicates where the water is a foot deep—it had been down to three, but had raised a foot. It was comparatively low water when I made the measure of the depth in 1872, but not so low as when I made the diagram.

Cross-examination by libelant:

1. I see on your map the words "pier 15 feet above low-water mark of 1871." You mean by that, do you not, that the top of the pier was fifteen feet above low-water mark of that year?

A. Yes, sir.

2. Was not that very low water?

A. It was very low water—the lowest water, except one, that I know of. That was in 1864.

3. You have stated that, at the time you measured, the depth of
709 the water at the pier was seven and a half feet deep. Give the depth of the water say ten feet out from the pier.

A. I can't do it.

4. Why?

A. Right at that point there is and eddy in the bottom like a half moon. It was over ten feet.

5. How deep was it say twenty feet from the pier?

A. I can't say. It was over ten feet.

6. Can you give me the difference in the stage of the water on Oct. 9, 1871, and on Aug. 13 or 14th, 1872?

A. It was higher in Aug., 1872, than it was in October, 1871; but I cannot say how much.

7. State the difference as near as you can recollect.

A. It might be from a foot to fifteen inches—somewhere along there.

9. How far out from the gravel-bar did you find the water ten feet deep?

A. I can't tell you how far out I found it ten feet. The first
710 sounding was six feet deep. From the shore at the gravel-point was about twenty feet distance out; the next sounding, twenty feet out; no bottom.

10. How far out is it from the point of the gravel-bar to the bluff-bank on this side of the river?

A. Three hundred and nineteen feet,

11. The navigable channel and navigable water of the river has been spoken of. What do you understand by navigable water?

A. Navigable water is water that is deep enough to float any vessel that runs in that section of the country.

R. H. HEATH.

Fees for one day, $1.50; paid by respondent.

Subscribed and sworn to before me, this 29th day of Aug'st, 1872.

D. F. MILLER,
Commissioner.

(Here follows map marked page 711.)

712 HIRAM FINCH, witness of lawful age, being sworn, testifies as follows:

I reside in F't Madison. I have been off the river for a year since last April. I was a mate on steamboats on the Upper Mississippi River for 16 years before I left the river, a year and a half ago. Eight years of the time I run from Keokuk and Montrose to Davenport, and four years of the time simply from F't Madison to Davenport. The last two years of my time on the river I run from Montrose to Davenport. Our regular trips from Keokuk, Montrose, and F't Madison was three times up and three times back.

1st. Are you well acquainted with the river where it runs around the gravel-bar above Atlee's mill, at French Creek?

A. I am acquainted with that part of the river.

2. Have you seen the upper pier in front of Atlee's mill?

A. I have.

713 3. When the river passes around the point of that gravel-bar,

at the mouth of French Creek, which way does the channel of the river direct itself?

A. It strikes quartering across to the Ill's shore or island.

4. How far do boats usually pass beyond or outside the upper pier at Atlee's mill?

A. I have run from thirty to seventy-five yards.

5. What obstruction, if any, does that pier constitute to the navigation of the channel of the river? Does it obstruct the channel any?

(Objected to as incompetent and leading.)

A. Anything in the river is an obstruction to navigation; even a saw-log.

6. Do you know whether there has been rafts of saw-logs lying in front of Atlee's mill; and, if yea, how many years have they been lying there?

A. There are logs lying there during all the season of naviga-
714 tion. I believe I have passed there was no logs in front of the mill. It was late in the season. We were speaking about in on the boat.

7. Which extended the furthest into the river, the rafts or the piers?

A. I think I have passed there at times when there were logs extended as far, if not further, into the river than the pier is.

Cross-examination by libelant:

1st Q. Have not Atlee's rafts varied considerable in size?

A. They have. There has been more logs lying there at some times than at others.

Q. Have there not been times when there were very few logs there?

A. There has been times when there were a good many logs less there than at other times.

3. Has he not sometimes kept his logs above the mill under the gravel-bar?

715 I have seen rafts of logs lying under the bar at different seasons.

4. Has he not sometimes kept his rafts and logs below the mill?

A. I could not answer that; I don't know.

5. Were you ever a pilot?

A. No, sir.

6. What boats were you mate of?

A. Jennie Lynn, Ben. Campbell, Keokuk, Lauzerne, Pomeroy, Kate Castle, Keithsburg, New Boston, Rock Island, Dubuque.

7. What is the depth of the water around the upper pier at high water?

A. I never measured the water around the upper pier.

8. Is it deep enough for steamboats to run there?

A. I have run by the upper pier many times within 50 to 75 yards of it, and found plenty of water.

9. I ask you again whether the water around the upper pier is not deep enough for boats to run in?

716 A. To the best of my opinion there is water enough to run close to the pier.

10. I' there not a sand-bar out in the river a little distance from the gravel-bar and extending down the river?

There is a sand-bar to the left of the channel.

11. How broad is the channel opposite the pier?

I think, to the best of my opinion, it is four hundred feet and perhaps more.

HIRAM FINCH.

Witness-fees, 2 days, $3.00; mileage, $2.40.

Subscribed and sworn to before me this 29th day of Aug'st, 1872.

D. F. MILLER, JR.,
Commissioner.

717 F. KIEL, witness, of lawful age, being duly sworn, testifies as follows:

I reside in Ft. Madison, and have here resided with my family since 1840. My family residence has been in a house on the bank of the Mississippi River, with a street between me and the river, a block and a half or two blocks up the river from the mouth of the French Creek since 1850.

1. Q. You say you have resided within a couple of blocks of French Creek since 1850. How far can you see down the river and how far up the river from where you reside?

Yes, sir; I can see about two miles down. Atlee's saw-mill prevents me from seeing a part of the river. In looking down I can see a part of the river, about three miles up. I keep a liquor-store in front part
718 of my house.

2. Do you have a fair full view of the gravel-bar at the mouth of French Creek and of Atlee's piers from your front door?

A. I do.

3. Mr. Kiel, will you please state the channel of the river as indicated by the route of steamboats in going down the river after they get passed the bar at the mouth of French Creek? State the course they have run from that point ever since you first moved to the house you now occupy?

A. Right above the bar they run over to the Ill's shore quartering.

4. How far out, as near as you could judge, have the boats run from Atlee's upper pier?

A. I have no idea what distance it is, but they run a good distance from the pier. If a boat wants to get to the pier they will have to
719 turn around the bar and come in to the shore.; that is, at the present stage of water.

5. Have you seen rafts lying in front of Atlee's mill during the spring, summer, and fall seasons, since he erected his mills?

A. I have.

6. Which have extended the furthest out into the water, the pier or the rafts?

A. I have seen rafts extend further out than the piers; that is, both of the piers.

Q. 7. Have you, since Atlee had his mill and rafts along there, seen any boat pass down the river over the spot where Atlee's piers now stand?

(Objected to as leading.)

A. I have never seen a boat use that as a channel to run in.

Cross-examination by libelant:

1. What is your business, and what has it been for the last twenty years?

A. I am a liquor-dealer and rectifier.

2. You have never been a steamboat-man have you?

720 A. I have not, but I—

3. How far do you live from the upper pier?

A. I cannot say positively. I think it is 1,500 or 2,000 feet, more or less.

4. You say that boats in going down the river cross from the gravel-bar to the Ills., right above the gravel-bar do you?

A. I did.

5. How long have they crossed at that place?

A. Since my recol'ection.

6. Can you swear that boats have never run where the pier now stands?

A. They might run there in high water when boats can run anywhere; not that I have seen them. I have seen packets run in there to land; they run around that bar.

7. You said that Mr. Atlee has had rafts in front of his mill. Have they varied greatly in size?

721 A. Sometimes large rafts and sometimes small ones.

8. In the early spring he does not have many logs there does he?

A. Sometimes he does not have any in the piers early in the spring; he don't usually have them there when the river first breaks up, and the ice goes out, but he soon brings them down through the sloughs where they lay during the winter.

Redirect examination by respondent:

9. The mode in which Rice for libelant put his fourth cross-question to you requires me to ask you again, which way do boats pass down the river after they leave the point of the gravel-bar at the mouth of French Creek?

A. They pass down a kind of quartering to the Ills. shore.

F. KIEL.

Witness fees 1 day, $1.50, paid by respondent.

722 Subscribed and sworn to before me this 29th day of Aug'st, 1873.

D. F. MILLER, JR.,
Commissioner.

F. TANUN.

I am a butcher by occupation; reside in Ft. Madison; have lived here for twenty years. I lived in 1853, '4, '5, on land just beyond Atlee's mill land. And I had the ground where Atlee's mill now stands in a pasture field, which I rented of Hon. Ed. Johnstone.

1. Q. How often were you along the banks of the Mississippi River where Atlee's mill stands and below the mill, whilst you had that ground for a pasture-field for your cattle 17 or 18 years ago?

A. Sometimes I was there every morning and sometimes I was not there for two or three days; general'y in the evening I was there.

2. I ask you in regard to the bank of the river along in front of
723 Atlee's mill and ground, whether it was the same then as it is now or not?

A. It is not the same now as then. The high water took some ground away from there. I know that 10 or 15 feet from where that upper pier now stands the bank was, and my fence was there, and that the bank was washed away, and carried the rails away. They were Johnstone's rails.

Cross-examination by libel'ant:

1. Q. The bank was washed away while Johnstone owned the land, was it not?

A. No. There was a little washed away while Johnstone owned the land, but most of it washed away since Mr. Atlee owned it.

2. How much was washed away while Johnston' owned the land?

A. Not much washed away while Johnstone owned the land. Most of it washed since Atlee purchased it.

3. How many feet have been washed away altogether?

724 A. I could not tell particular how many feet have been washed away. I think 100 feet.

4. Is it still washing?

A. It washed away a couple of years ago. Mr. Atlee tended to it to keep it from washing.

5. Is the water pretty strong there?

A. Middling strong there.

F. FAMME.

Witness fees 1 day, $1.50.

Subscribed and sworn to before me this 29th day of Augs't, 1872.

D. F. MILLER, JR.

JOHN SCOTT, a witness of lawful age, being duly sworn, testifies as follows:

My name is John Scott. I am 57 years old. I reside with my family in F't Madison, Iowa. I moved to F't Madison with my family in 1847; am a carpenter by trade, but have been night-watch at Atlee's
725 mill since 1871. Since I came to F't Madison I have been acquainted with the ground where the mill now stands. I think I could walk seventy-five feet further out on ground in front of Atlee's mill when I first came here than I can now. I think it has washed 75 feet or more. I worked two years in the planing-mill at Atlee's mill before I became night-watchman. I have noticed how near boats pass to the piers at Atlee's mill. I am not a very good hand to guess on water.

1. Q. Have you noticed boats passing the mill during your night-watches?

A. I have.

2. About how far do you think they usually pass out from the upper pier?

A. About from a 100 to 150 yards.

3. Have you noticed, during your long residence in this town, which way boats run going down the river after passing outside of the gravel-point at the mouth of French Creek?

726 A. Yes, sir; I have. They run different. The boats that run 150 yards out run very near straight from the point down the river. Some boats run nearer the pier.

4. Do you know of rafts lying in front of Atlee's mill; and, if yea, how long have you know' of them lying there?

A. As a general thing the'e have been rafts lying there in the navigable season of the year since the mill was there.

Q. 5. Have you or have you not ever seen a boat or boats run as close into the shore as where that upper pier at Atlee's mill stands?

(Objected to as leading. Question withdrawn by respondent.)

Q. 6. How near have you seen steamboats ascending or descending the river run to the shore immediately in front of Atlee's mill?

A. I have seen them run within 100 yards of the pier, and might be nearer.

727 Q. 7. Did you see the barge Jack Reaney soon after she struck the pier?

A. Within half an hour I saw a barge that they said struck the pier, but I do not know the name of it. I did not see her strike the pier. When I saw her she was not sunk; was under the guard of the steamboat.

Q. 8. Were you near enough to see whether there was any freight on the top of the barge?

A. There might have been some freight on the barge, but I did not see it. I don't think I was nearer the barge than 300 feet.

Cross-examination by libel'ant:

Q. 1. When you are at the mill you are there simply at the night-time, are you not?

A. From half-past four in the morning. That is a general thing. Sometimes I vary a little.

728 Q. 3. I understand you to say that the ground in front of Atlee's mill has, in your opinion, washed away about 75 feet since the year 1847. Am I right?

A. You are.

Q. 4. Some of it was washed away within the next 12 years after that date, was it not?

A. Some was washed away prior to that time, and some since that time. It has been washing away every year for the last three or four years. Atlee has been protecting bank.

Q. 6. I ask you whether there was not a considerable piece of ground there washed away while Judge Johnstone owned the ground?

A. I don't know as there was any more washed away then than there has been since. It was according to the water, whether high or low.

Q. 7. Do you consider yourself a good judge of distances on the water?

A. I stated once that I am not a good judge.

729 Q. 8. Have you not seen rafts pass pretty near to the upper pier?

A. Yes, sir. I have seen the wind blow them in so they would graze it.

Q. 10. Is there not a difference in the distance within which boats pass the pier between those going up and those coming down?

A. I cannot say that I have seen much difference. There might have been, but I do not reccol'ect it.

Q. 11. (You speak about boats being out.) What direction do boats take in passing between the gravel-bar and the sand-bar? Do they go straight down?

A. As a general thing, when they pass French Creek they run straight down as the river runs.

Q. 12. Have you seen boats land at the mill?

A. I have seen them land just above and below the mill. I have never seen them land exactly in front of the mill.

730 Q. 13. Have you not seen boats land between where the upper pier stands and the shore, or within a few feet of there?

A. I don't think I ever did except their own boat.

Q. 14. What is the depth of the water around the upper pier.

A. On the inside it varied from from five to seven feet at a common stage of water. I cannot say how deep it is on the outside.

Q. 15. Have not other rafts varied greatly in size?

A. Some rafts are 10 string, some 12, and some as high as 13 strings.

Q. 16. Have there not been times where the pier now stand and the shore?

A. There have for a short time.

Q. 17. Was there any raft there on the night when the Jack Reaney struck the pier?

A. There was no regular raft. There was some loose logs. It was early in the spring.

18. Did not the barge sink in the water below the lower pier.

A. It was below the lower pier.

731 Redirect examination by respondent:

1. Ques. How far, according to your idea of distance, is it from the gravel-point at the mouth of French Creek before boats commence to quarter over toward the Ills. shore?

(Objected to because the witness has not stated the boats quarter over to the Ills. shore, but has stated they go straight down the river below the gravel-bar.)

(Question withdrew by respondent.)

2. Ques. Please state carefully your idea of the channel as shown by the routes of steamboats, commencing at the point of the gravel-bar and running down the river, say four miles.

(Objected to because it does not appear that witness knew the channel of the river.)

A. I can tell as near as can by my eye the way boats run out. I cannot tell the channel of the river. I have stated in the first question straight down by the piers from a 100 to 150 yards out as I stated
732 it goes down by the Park house and crosses over towards the island.

Q. 3. How far is the Park house below the lowest pier?

A. I suppose it is 400 or 500 yards.

JOHN SCOTT.

Witness' fees 1 day $1.50.

Subscribed and sworn to before me this 30th day of Aug'st, 1872.

D. F. MILLER, JR.,
Commissioner.

PETER O. KELL, witness of lawful age, being duly sworn testifies as follows:

My name is Peter O. Kell. I have resided in F't Madison 13 years except 3 years I was in the naval department of the Union Army on the Mississippi River, and 2 seasons in Stillwater, in Minn. I was executive officer of the navy-yard at Cairo, Mound City, three years during the war. At Stillwater, I run a saw-mill the balance of said period except one year I have worked at Atlee's mill. My work at the
733 mill has been attending to the saw-logs and assist in running the mill. When the raft would be dropped into the boom I would see that it was properly secured, and select out such logs as was required. I have the general supervision of the logs before they are sawed. We have from one to two rafts lying before the mill between the piers most of the time. We have a raft above the pier and sometimes below. We have logs that are lying on the sand-bar at the mouth of the creek sometimes. The widest raft that comes down is about 200 feet, that would be a 12-string raft. The narrowest raft would be 165 feet. Either one of those rafts, at an ordinary stage of the river, will extend out 90 feet from the pier. The boom commences at the

shore below the lower pier, runs out and is fastened to the lower pier: from the lower pier, runs to the upper pier and is fastened to it; runs then up the river within about a hundred feet of the Union Ware-
734 house. The boom passes over the gravel-bar. The logs are now lying on the bar. The Union warehouse is on the upper side of the gravel-bar. When the raft is dropped into the boom, the boom comes around on the outside of the raft. The boom consist' of long logs mortices in them and chained together, and which, by floating, prevent the logs from escaping.

1. Ques. How many feet of water in front of a saw-mill is needed for rafts for a saw-mill?

(Objected to as immaterial.)

A. Two hundred feet.

2. Ques. Can a mill of the size and importance of Atlee's be properly and safely carried on without a boom and water frontage?

(Objected to as leading.)

A. No.

3. Ques. Can or cannot a boom be properly constructed in front of Atlee's mill without the assistance of the piers?

(Objected to as leading and immaterial.)

735 A. No; it can't.

4. Q. Have you noticed, during the period you have been attending to rafts and logs in front of Atlee's mill, how far boats in ascending and descending the river usual'y pass outside of the pier?

A. I have noticed it. They pass usually from one hundred to a hundred and fifty yards outside of the pier.

5. Q. Have you noticed which way boats down the river, after leaving the front of the gravel-bar at the mouth of French Creek; and, if yea, what is their course?

A. I have noticed when they round the gravel-bar they go quartering down the river toward the island on the Ills. side.

Cross-examination by libellant:

1st. Q. Do not boats vary in their course at different stages of the water?

A. Not materially.

2. Ques. That is your experience is it?

A. It is.

736 3. Ques. Have you ever been a pilot?

A. I have not on this river.

4. Ques. When is water usually the lowest in the Mississippi River?

A. In July and August.

5. Ques. How much of the year is it high water?

A. About five months of navigation.

6. Ques. Have you ever seen rafts hit either of these piers?

A. I have seen them graze by the piers, but never saw one strike the piers.

7. Q. How long is it since Atlee had a raft extending into the river beyond the pier?

A. We have had a number of them extending beyond the pier this summer. To the best of my recollection it is about five weeks since we had a full raft.

8. Q. How deep is the water at the end of the rafts?

A. I cannot say how deep it is; I do not know that I ever measured it.

9. Q. Give your best judgment how deep is it opposite the upper pier?

A. I should think the water *would* was 10 or 12 feet. I have
737 never measured it; perhaps it is more than that.

10. Q. Rafts in front of the mill do not extend far out into the river for any great length of time, do they?

A. They extend out that far for ten or twelve days at a time. It takes us that long to work them up.

11. Q. How long does it take to work up a raft?

A. That depend, of course, on the size of it; some rafts have 400,000, some 800,000, some 900,000 feet.

12. Q. You are still in the employ of Mr. Atlee, the respondent in this case, are you not?

A. I am.

Redirect examination by respondent:

I know that a barge with a hole knocked into her and filled with water will float, if there is no freight in her.

Cross-examination by libelant:

1st. Q. Did you ever raise a barge?

A. I have sunk two, and raised them *them* for the purpose of raising a propeller.

2. Q. How did you sink them?

738 A. By boring holes in them.

3. Q. How did you raise them?

A. By pumping them out after stopping the holes.

Redirect examination by respondent:

I used the barges to raise the United States Steamer Myrtle, near Cairo. When I bored holes in the barges they did not sink to the bottom of the river, they only sank to the top of them or to the water-line. I had a diver who went down and put chains under the keel of the steamer, and the ends of the chains were fastened on spars on the barges. I then fastened the holes in the barges and pumped them out, and when empty they raised the steamer, which lay in about twenty-five feet water.

Recross-examination by libelant:

1st. Q. Suppose a large hole to be knocked in the side and bottom of the barge, how deep will she sink in water?

A. She will sink to her deck.

739 2. Q. When the Jack Reaney sank below Atlee's mill did not the water cover the deck of that part of the barge which was lying out into the stream?

A. It did, owing to the other side being on the ground.

P. O. KELL.

Subscribed and sworn to before me, this 30th day of Aug'st, 1872.

D. F. MILLER, JR.,
Commissioner.

Respondent files copy of deed from John C. Atlee to Samuel J. Atlee, conveying to the latter 30 acres of ground, being the ground on which the mill stands. Date of deed, Jan. 11, A. D. 1860, certified by Noble Warwick, recorder of Lee County, Iowa. Copy marked Exhibit R S T.

Respondent also files deed from Edw. Johnstone and wife, to John C. Atlee and Nathaniel Bennett, of date 30th of March, 1855, marked
740 Exhibit U V W; also, deed from Edw'd Johnstone to John C. At-

shore below the lower pier, runs out and is fastened to the lower pier: from the lower pier, runs to the upper pier and is fastened to it; runs then up the river within about a hundred feet of the Union Ware-
734 house. The boom passes over the gravel-bar. The logs are now lying on the bar. The Union warehouse is on the upper side of the gravel-bar. When the raft is dropped into the boom, the boom comes around on the outside of the raft. The boom consist' of long logs mortices in them and chained together, and which, by floating, prevent the logs from escaping.

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A. No.

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735 A. No; it can't.

4. Q. Have you noticed, during the period you have been attending to rafts and logs in front of Atlee's mill, how far boats in ascending and descending the river usual'y pass outside of the pier?

A. I have noticed it. They pass usually from one hundred to a hundred and fifty yards outside of the pier.

5. Q. Have you noticed which way boats down the river, after leaving the front of the gravel-bar at the mouth of French Creek; and, if yea, what is their course?

A. I have noticed when they round the gravel-bar they go quartering down the river toward the island on the Ills. side.

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A. Not materially.

2. Ques. That is your experience is it?

A. It is.

736 3. Ques. Have you ever been a pilot?

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5. Ques. How much of the year is it high water?

A. About five months of navigation.

6. Ques. Have you ever seen rafts hit either of these piers?

A. I have seen them graze by the piers, but never saw one strike the piers.

7. Q. How long is it since Atlee had a raft extending into the river beyond the pier?

A. We have had a number of them extending beyond the pier this summer. To the best of my recollection it is about five weeks since we had a full raft.

8. Q. How deep is the water at the end of the rafts?

A. I cannot say how deep it is; I do not know that I ever measured it.

9. Q. Give your best judgment how deep is it opposite the upper pier?

A. I should think the water *would* was 10 or 12 feet. I have
737 never measured it; perhaps it is more than that.

10. Q. Rafts in front of the mill do not extend far out into the river for any great length of time, do they?

A. They extend out that far for ten or twelve days at a time. It takes us that long to work them up.

11. Q. How long does it take to work up a raft?

A. That depend, of course, on the size of it; some rafts have 400,000, some 800,000, some 900,000 feet.

12. Q. You are still in the employ of Mr. Atlee, the respondent in this case, are you not?

A. I am.

Redirect examination by respondent:

I know that a barge with a hole knocked into her and filled with water will float, if there is no freight in her.

Cross-examination by libelant:

1st. Q. Did you ever raise a barge?

A. I have sunk two, and raised them *them* for the purpose of raising a propeller.

2. Q. How did you sink them?

738 A. By boring holes in them.

3. Q. How did you raise them?

A. By pumping them out after stopping the holes.

Red'rect examination by respondent:

I used the barges to raise the United States Steamer Myrtle, near Cairo. When I bored holes in the barges they did not sink to the bottom of the river, they only sank to the top of them or to the water-line. I had a diver who went down and put chains under the keel of the steamer, and the ends of the chains were fastened on spars on the barges. I then fastened the holes in the barges and pumped them out, and when empty they raised the steamer, which lay in about twenty-five feet water.

Recross-examination by libelant:

1st. Q. Suppose a large hole to be knocked in the side and bottom of the barge, how deep will she sink in water?

A. She will sink to her deck.

739 2. Q. When the Jack Reaney sank below Atlee's mill did not the water cover the deck of that part of the barge which was lying out into the stream?

A. It did, owing to the other side being on the ground.

P. O. KELL.

Subscribed and sworn to before me, this 30th day of Aug'st, 1872.

D. F. MILLER, JR.,
Commissioner.

Respondent files copy of deed from John C. Atlee to Samuel J. Atlee, conveying to the latter 30 acres of ground, being the ground on which the mill stands. Date of deed, Jan. 11, A. D. 1860, certified by Noble Warwick, recorder of Lee County, Iowa. Copy marked Exhibit R S T.

Respondent also files deed from Edw. Johnstone and wife, to John C. Atlee and Nathaniel Bennett, of date 30th of March, 1855, marked
740 Exhibit U V W; also, deed from Edw'd Johnstone to John C. At-

lee, of date Oct. 26, 1857, marked Exhibit X Y Z; also, deed from Nathaniel Bennett and wife to John C. Atlee, dated 28th day of January, 1858, marked Exhibit Z Y & C. Libelant, by his attorneys, objects to the admission of said deeds in evidence, for the reason that they do not show the title to said land to be in respondent.

SAMUEL ATLEE, of lawful age, and respondent in suit, produced and sworn as a witness in the case; and, in answer to his counsel's questions, testifies as follows:

I am the respondent in this suit. I am the grantee in the deed from John C. Atlee, a copy of which is filed in this case, marked Exhibit R S T; when this copy was made the original was mislaid. Since then I have found it;-can produce it if required.

(Libellant, by his att'y, waives the production of the original deed from John C. Atlee to Samuel Atlee.

The land included in the deed commences at the mouth of
741 French Creek and runs down the river for about a quarter of a mile. The deeds show the exact distance. A part of the land which my father got from Judge Johnstone he plotted off into blocks, and his deed to me, as you will notice, contains description of the ground in part by blocks down, and have possession of (my father having an interest with me) *of* all the ground included in the deeds from Johnstone and wife to my father, John C. Atlee, and the deed from Johnstone and wife to John C. Atlee and Nathaniel Bennett; reference is hereby made to the last two deeds for a more particular description of the property, except from said land five or six lots of 50 by 150 feet each lying on the north of said tract of land and north of the C., B. & Q. R. R. tract. The upper mill stands on the five-acre tract; two of the mills stand on the other tract, and another mill down still beyond or
742 lower down the river, which I have not produced a deed for, stands on another tract of land, but I have a deed for it, and can produce a deed for it if required. This last mill is below the lower pier. We own the shore about 700 feet up the river to the half-breed line. We sold the land back of this piece to the R. R. Co., but reserved the shore. It was where the old Leslie mill-property stood formerly. We own the shore for about half a mile in front above, and below our mill, and have had the possession and use of the same for about 10 years, and have claimed to own the same for that time.

(The above answer objected to as incompetent, immaterial, and secondary evidence.)

Our first mill was erected there in 1854 or '5, and we now have three mills in operation; one we do not run. We have about 110 per-
743 sons in our employ about those mills. Sometimes we have 120 persons.

1st Q. What did you erect those piers for?

A. To fasten a boom to, and keep the rafts from floating down the river. Without the pier our rafts are liable to go adrift in time of storm, piers being the only secure way of fastening rafts to the river.

2. Q. How far do your rafts sometimes extend out into the river compare' with your piers?

(Objected to as immaterial.)

A. They usually extend outside of the pier about 80 feet when we have a full stock of logs in. These rafts have lying in front of our mills for about 16 years, except during the winter season.

3. Q. Did you find any difficulty in landing your rafts when the mill was started, on account of any obstruction in the water along the

shore? and, if yea, state what were the obstruction', and what was done with them, if anything.

744 We found large rock or boulders. Some of them was as large as 4 by 6 feet, a portion of which we removed by burying them in the ground. They were scattered along the shore, from 10 to 30 feet from the bluff-bank.

4. Q. How much of your time have you spent at your mills for the last 12 years—I mean business-days?

A. All of that time except two weeks, during the month of January, 1865.

5. Q. Have you noticed the route of steamboats for the last 12 or 15 years, in front of your mill? and, if yea, state what is their usual route descending the river, from the point of the gravel-bank at the mouth of French Creek.

A. I have noticed the boats for that period of time—their route in low water. They pass in quarterly direction to the island on the Ill's shore, from 200 to 300 feet outside of the upper pier; and in high water

745 they usual' pass down the middle of the river.

6. Q. How do they pass, as regards that gravel-bar at the mouth of French , when the river is high?

A. Usually outside of it.

7. Q. How far up the river does the upper end of your boom extend?

A. About 1,800 feet above the upper pier.

8. Q. About how long is the largest-sized raft?

A. About 400 feet.

9. Q. About how near have you ever seen, in your recollection, knowledge, and belief, a steamboat, either ascending or descending, run where the upper pier stands?

A. About 100 feet outside the pier is the nearest I ever saw a boat run to that pier when under headway. We used to tie our own steamer to the pier for protection from storms, &c. I have opened the boom and let the steamer Prescott in to get some flat-boat timber for its own

746 use this year, and the steamer Cricket last year for to get some derrick timber. Some years ago, when the railroad bridge gave way, we removed some logs, cut down some trees from the bank, to enable the steamboats to land for the benefit of the railroad.

Cross-examination by libelant:

1st Q. How far out beyond the upper pier do your rafts to-day extend?

A. To-day, at ten o'clock, they extend out 16 feet.

2. Ques. Has or has not a new raft been put in there, or a part of one, yesterday or to-day?

A. Yes, sir; there has.

3. Q. Before to-day has it not been five or six weeks since your rafts extended beyond the upper pier?

A. It has not.

4. Ques. How long has it been?

A. Only occasionally. We get in a raft every week; some weeks two rafts.

5. Ques. Do you keep rafts there in early spring?

A. Generally from the opening of navigation.

6. Que. Have you not seen rafts hit the pier?

747 A. I saw the stern crib of a raft strike our log-raft, knock our logs loose, pass in down the river, and strike the corner of the pier. It was in the spring of 1871.

7. Ques. How near to the shore were the boulders you have spoken of?
A. All along the shore, in the water and out of the water.
8. Ques. How near to the water's edge?
A. Some places in the water and some places out of the water.
9. Ques. Did you ever have a pier there before this present one?
A. We had no pier there. The pile of rocks were put there in the winter of 1869 and 1870 and the summer of 1870. The pier was erected on the pile of rocks in the winter 1870 and 1871.
10. Q. You have never been a pilot or steamboatman, have you?
A. I have never been a pilot. I have owned a steamboat in connection with my raft business.

S. ATLEE.

748 Subscribed and sworn to before me this 30th day of Aug'st, 1872.

D. F. MILLER, J'R,
Commissioner.

The taking of the depositions in this case is continued until the 2nd day of September, until 9 o'clock a. m.

D. F. MILLER, J'R.

GEORGE ANDERSON, witness of lawful age, being duly sworn, testifies as follows:

Witness recalled:

1. Q. In case libelant had floated the barge Jack Reaney to Montrose immediately after the accident occurred, what is the shortest time in which it could be repaired?
A. I think about two weeks would have been a reasonable time with my force. I work from about ten to twenty hands, as necessity requires.

Cross-examination by libelant:

1. Q. Do you mean after she was taken to Montrose?
A. Yes, sir.
749 2. Q. Did you examine said barge carefully to see first what injury she received?
A. I went aboard the barge and looked at her while they were finishing her up at Montrose.
3. Q. Is your idea of the amount of repairs required, and of the time required to repair the barge, derived from what you saw when they were finishing her repairs?
A. Yes, sir; though my opinion is I could have done it in less time than I stated. I set it at the longest time it would take me.
4. Q. There were some repairs on the barge, were they not, before she was taken to Montrose?
A. Yes, sir.
5. Q. Did you make a very careful examination of the barge at Montrose?
A. I saw pretty much all that was done to her.
6. Q. Proceed and give us an account of just what injuries the barge received.
A. I am unable to do that minutely.
750 7. Q. Does your estimate of the time required to repair the barge embrace the covering and the dun'age of the barge?
A. Yes, sir. I think about all.

8. Q. Could you, with the other repairs, have made within that time a new covering and dun'age, and *of* put them on?

A. I am only at a loss to know whether I could have complete' the covering, it being in such a shape that it could not have been put on until the other repairs are completed, or nearly so.

9. Q. Do you remember exactly, at this distance of time, what repairs were put on the barge at Montrose?

A. It was *cor*king deck-work were the princip*le* repairs there were put on her.

10. Q. Is that all of the repairs that were put on her?

A. All that I know of. I think it was all.

Redirect examination by respondent:

1. What was the extent of repairs on the barge before she was removed to Montrose?

751 A. The break was repaired, and she was *cor*ked above high water.

2. Q. How much *cor*king was rendered necessary by the simple breakage in the side of the barge?

A. A break of that kind affects both sides; more than likely the knuckles and keels would be shaken, but it would not be necessary to *cor*k her all over if she was in good condition at the times.

3. Q. What necessity was there in removing the entire roof in order to repair a simple breakage in the side of the barge?

A. I don't know. I don't see any particular necessity, except to lighten the barge.

Recross-examination:

1st. Q. Suppose the roof was badly broken, and the barge badly twisted out of shape, and nearly broken in two in the centre, so that the centre of the barge was much higher than the two ends, would there have been any necessity in that case to have removed the covering?

752 No, sir; no absolute necessity; though I think that the twisting about of the barge in raising her would damage the roof.

2. Q. Suppose the barge to have been broken nearly in two, her seams sprung apart for nearly 50 feet in length, her deck, bottom, and side stove in, how much *cor*king in that case would have been necessary?

A. A barge in that condition would require *cor*cking all over.

3. Q. Had not the barge lain in the water at the shore of the river, just below Atlee's mill, for three months before she was taken to Montrose?

A. I don't know the exact time, but I guess nearly that time.

4. Q. Did you make any examination of her before the end of that three months?

A. I saw her when they were raising her. When she was partly blocked up she was in bad shape. She was cracked; they haden't straigh'en'*t* her.

Redirect examination by respondent:

753 1. Q. What necessity was there for the said barge remaining where it sunk for three months?

(Objected to because the testimony of witness shows that he is not an expert in such matters, and had not seen the barge during the time referred to in the question.)

A. I don't know. I believe that is a question that is not within my particular range. I know of no particular necessity.

GEO. ANDERSON.

Witness-fees 1 day, $1.50; mileage, $1.20; paid by respondent.

Subscribed and sworn to before me this 2nd day of September, 1872.

D. F. MILLER, JR.

754 B. F. ANDERSON, being recalled, testifies as follows:

(Att'y for libel'ant here objects to the re-examination of the witness, the witness having been already re-examined in this case, and his deposition signed and closed.)

1. Q. What would have been the reasonable cost of repairing the damages to the barge in dispute if she had been floated down to Montrose immediately after the accident, and in what time could such repairs have been made?

A. I think the lumber, materials, work, &c., would have come in the neighborhood five hundred dollars; perhaps more. Seven or eight men might have done it in seven or eight days. It might have taken a little longer than that.

2. Q. What corking was done, if any, that was not rendered necessary by the breakage of the barge?

A. I think they corcked the whole barge. There was corking done besides the breakage. I think they corked the whole bottom
755 of the barge, and pretty much all the sides; that is my impression now.

3. Q. What was the extent of the breakage of the barge by the collision?

(This question objected to, as the same ground has been over in the former examination of witness.)

A. I think I answered that question before.

Cross-examination by libelant:

1st Q. You worked on the barge 18 or 20 days, yourself, did you not?

A. Yes, sir.

2. Q. Did you work on it here or at Montrose?

A. I worked on it at Fort Madison.

3. Q. You have not seen that barge for over a year, have you?

A. I believe not.

4. Q. At this distance of time can you swear as to exactly what repairs on the barge were required?

A. I can recollect pretty much all of it.

5. Q. You don't know what repairs were made at Montrose, do you?

A. I don't.

756 6. Q. Does your estimate of the amount necessary to repair the barges include the covering, the dun'age, hog-chain, and the corcking?

A. It does not include hog-chain and cargo-box. I estimated the dun'age, what was necessary to be taken off to repair it.

7. Q. Suppose a barge to have been in the water three months, with her seams sprung open for fifty feet in length, barge crushed out of shape, side and bottom stove in, and other injuries to her, would it or not be necessary to cork the barge all over when she was raised out of the water?

A. No; I don't think it would.

B. F. ANDERSON.

Witness-fees, one day, $1.50.

Subscribed and sworn to before me this 2nd day of September, 1872.
D. F. MILLER, JR.,
Commissioner.

757 WILLIAM A. GRIFFEY, being duly sworn, testifies as follows:

My name is William A. Griffey; reside in Montrose, Iowa; age, 56 years; occupation, go as a pilot on the river from St. Louis to St. Paul. I believe I started out as a pilot, in 1836, in running lumber down from Dubuque to St. Louis.

1st Q. When did you commence as pilot of steamboats on the Upper Mississippi River, and how much of your time since then has been so taken up?

(Objected to because the witness has not stated that he is a steam't-pilot.)

A. I commenced piloting steamboat' in about 1851. In 1852, I got license from St. Louis to Dubuque. I have been off and on. Sometimes I have been on for a time, and again I have been off. I cannot tell how much of my time I have spent on the river as a pilot.

2. Q. How many seasons have you missed being on the river since 1851, as a pilot?

758 A. There has been but one year but what I have made more or less trips up and down the river as a pilot.

3. Q. Give the names of boats that you have been engaged on, as pilot, since 1851.

A. I don't know as I can recall the names of half of them. I have been on Dubuque, Col. Morgan, Julia Dean, Forest Rose, Ida May, Nerva, Resolute.

4. Q. What knowledge have you of the upper pier in front of Atlee's mill?

A. I know where it is. I have piloted boats passed it night and day many times since it was erected, and many hundred times before there was a pier there.

5. Q. Were you acquainted with the pile of rock that lay there before the pier was erected, and which was put there by Atlee the year before the pier was erected?

A. I can't say who put the stone in the river. I didn't see them put in, but I saw them in the river.

759 6. Q. Are you acquainted with the gravel-bar or delta at the mouth of French Creek?

A. Yes, sir; I have passed it a great many times. I know that gravel-bar. I have been on it.

7. Q. Will you please explain fully, and in your own way, which way the current and channel sets after it passes the point of the bar at the mouth of French Creek, and how the current o' channel is affected, is at all, by a sand in the vicinity of said gravel-point, and how, if at all, navigation is affected by the upper pier at Atlee's mill?

A. The water sets off. You may take a log or raft, a' I have done, and if you run it wide enough to pass the point of the bar it will run a hundred feet from the upper pier, unless you pull it in. The point sets the current out; and the reason why, it is a back action of the wate' after it strikes against this gravel-point. I don't consider that the pier is in the channel or in the way of any steamboats or raft properly managed. With a raft it would be no danger, except driven in

780 by wind; and a steamboat had full control of itself, and had no excuse for running into the pier.

8. Q. How near do steamboats general'y run to said upper pier in an ordinary stage of water?

A. I never measured the distance, but not less than two hundred feet, the common width of a large raft. This is in low water; in high water you could run two or three hundred yards to the left of it if you wanted to.

9. Q. At a low, or ordinary stage of water which way does the water run after it passes the gravel-point at the mouth of French Creek?

A. It runs towards the Ill's shore. It runs straight from the gravel-point toward the Ill's shore for about half of a mile in the middle of the river, until it strikes the point of a bar on the left-hand side, then closes toward the Ill's shore, then crosses aside the big bar to the Iowa shore.

781 10. Q. Steamers passing from 200 feet and upwards from the upper pier, in what part are they then of the main channel of the river?

A. They are in as good water then as I know anything about. There are 500 or 600 feet of width of good water from that pier out to the bar. Steamers generally run 200 feet and upwards from the pier.

11. Q. When and how often have you known steamers or rafts run over the points where those piers are constructed since Atlee built his mills and kept his rafts in front of his mills?

A. I have not seen any or been on any that run in close enough to interfere with those points where the piers now are.

12. Q. How far would a large, ordinary-sized raft of logs extend beyond the upper pier when fastened or lodged against the bank in front of Atlee's mill in an ordinary stage of water?

(Objected to by libellant as immaterial.)

782 A. I should think from 40 to 60 feet. It depends on the size of the raft and the height of the water. I have seen rafts in the booms when they extended outside in the river 40 or 50 feet further than where the pier now stands.

13. Q. Suppose a barge should, by collision, have a large portion of her side smashed in, and she should fill with water, would she sink or would she float in deep water, provided she had no load in her?

A. She would float just level with the river. I have sunk and floated them. I have sunk two or three of my own on the rapids, and others elsewhere in the river. I sunk a barge for a Pittsburgh man with considerable freight on her, and she floated.

14. Q. What necessity is there, if any, in an ordinary stage of water, or even in a low stage of water, to have lights placed on the upper and lower piers at Atlee's mill at nights; the said piers not being in

783 the channel of the river, as you have already testified?

(Objected to as immaterial.)

A. I don't think it is really necessary to have them there. It may be a convenience there to some men who are a little green and do not know their business.

Cross-examination by libelant:

1. Q. How deep is the water at the end of that gravel-bar, when the water is at a low stage?

A. I never measured it. I cannot tell.

2. Q. When the water was high, you never ran over that gravel?

A. No; I never ran over it. I always knew where it was, and avoided it.

3. Q. What is the difference between hig' and low water? State, if you can, the number of feet.

A. Some years the river is called high, and yet is a grea' deal lower than other years. There is a difference in season from seven to ten feet in the raise of the river.

784 4. Q. Is there sometimes a greater difference than that even ?

A. There is sometimes ; but it is good ways apart.

5. Q. Is any part of that gravel-bar covered at the present stage of water ?

A. Yes, sir.

6. Q. How much of it ?

A. I guess there is two-thirds of it in length out in the river.

7. Q. I' that a.bar a flat bar ?

A. No, sir; not altogether. It is flat next to the shore, and then runs out to a point.

8. Q. Is it higher at the than at the shore ?

A. No, sir.

9. Q. What is the present stage of water ?

A. The river is two feet above low water.

10. Q. Do you call this present stage of water low water, or ordinarily low water ?

A. I would call it just ordinary.

11. Q. Is there not a sand-bar in the river some little distance from the point of the gravel-bar, and extending down the river as far

785 as the upper pier, and what distance is said sand-bar from the point of the gravel-bar and the pier ?

A. Yes ; the distance is about as far as I stated before. I think it is about five hundred feet. The distance is about as far from the pier to the sand-bar as it is from the point of the gravel-bar to the sand-bar.

12. Q. How deep under water is that sand-bar at a low stage of water ?

A. There is not over two feet of water on it at low water, and now, I think, there is about four feet over the reefe.

13. Q. Is said sand-bar a sloping sand-bar, or abrupt on its sides ?

A. I don't understand the manner in which the question is put.

14. Q. Suppose a boat is coming down the river, and mounts that sand-bar or reefe, the water being shoal on the sand-bar, what effect would it have on the navigation of the boat, or the direction of the boat, supposing the boat to be drawing four feet of water, and the water to be six or seven feet on the bar ?

A. The bar would not have a tendancy to stop her at all. It

786 would make her run slow, if she was a stern-wheel boat.

15. Q. Is there not a tendency in boats to run away from shoal water into deep water ?

A. There is some cases. Some boats will run away, and some will run on to it.

16. Q. There is pretty good water to the of that sand-bar down, is there not ?

A. Yes ; there is good water up to the reefe of the bar opposite the pier.

17. Q. What is the depth of water around the pier at a low, at a high, and at an ordinary stage of the river ?

A. I could not answer that question because I have not measured it since the pier was erected.

18 Q. What is the depth of the water at the place where the pier stands, at a low stage ?

A. I can't state. I do not know.

19. Q. Is it or is it not deep enough for boats to run there in low water ?

A. It is deep enough, if it were not for those boulders in there. We were always posted to keep away from that point, and give it a wide berth.

787 20. Q. What is the effect on the navigation of a boat having a barge lashed to its side, in tow of the boat?

A. A barge lashed to the side of a boat it is always expected to pull off some. There is that much more work for a pilot.

21. Q. Do not boats vary the course somewhat in high and low water?

A. Yes, a good 'eal; for if the water is high they can run straight, and need not go around any.

22. Q. Where did you say the crossing is made to the Ill's shore? How far below the gravel-point?

A. You go down about a half a mile in the middle of the river from those piers, and then cross over to the Ill's shore, and then back to the Iowa shore under the big bars as I have said before.

23. Q. Is there any bend in the Iowa shore about where the lower pier stands?

A. It commences to bend a little below that about Mr. Atlee's
788 lower mill, and continues to bend until it comes to the head of Kastel Slough.

24. Q. Does the Iowa shore about where the lower pier stands make something of a point out into the river?

A. Yes, sir; it makes kind of a sharp point out there, as it always has done. It is not near as pointed now as it was formerly; a great many trees have fallen in there; I think as much as twenty yards has washed in.

25. Q. Where, with reference to that point, does the current of the river cross to the Ill's shore?

A. It commences crossing as I have stated before, at the point of this gravel-bar.

26. Q. Does that point have any effect on the current or the channel of the river?

A. It would have this effect, it would stand off the water just the same as any other point on the river.

27. Q. Has not Mr. Atlee at times had very few logs in front of his mill?

A. I have seen it as such, sometimes there were few there, and
789 sometimes the boom were full; I have seldom seen it entirely vacant.

28. Q. Has he not kept rafts above the mill under the gravel-bar, and also below the mill?

A. I have helped land rafts in both places myself.

29. Q. What is the custom as to keeping lights on rafts when moored to the shore in the night.

A. They do generally; sometimes they do not.

30. Q. It is safer to have lights on obstructions in the river, and on rafts, &c., when they are in water deep enough for the navigation of boats?

A. Only for the reason of having other rafts or boats run into them; they cannot get damages unless they have lights.

21. Q. How was that pile of rock in the summer of 1870?

A. I can't answer. I don't know how high it was. I did not measure it.

40. Q. Have you a license as pilot now?

A. Yes, sir.

790 41. Q. How recently have you navigated boats passed the town of F't Madison?

A. I made the last trip about the 1st of June.

42. Q. What boat was it?

A. Latrona.

43. Q. Was it a side-wheel or a stern-wheel boat?

A. It was a stern-wheel boat.

44. Q. For what line of boats have you piloted during the last year?

A. No line.

45. Q. You have stated that you have been piloting on the river off and on for several years. State what years you have been on the river.

A. I have already stated that I have been on the river more or less since 1852, with the exception of one year.

Redirect-examination by respondent:

1st Q. In a stage of water that would allow boats to pass over the gravel-bank at the mouth of French's Creek, directly above Atlee's
791 piers, what would be the probability of steamers being able to psss over the sand-bars that you have described on the opposite side of the channel at the same time?

A. I should say that there would be plenty of water to go anywhere, because this gravel-bar is higher than any of the bars.

WM A. GRIFFEY.

Fees one day, $1.50; mileage, $1.20. Paid by respondent.

Subscribed and sworn to before me this 2nd day of September, 1872

D. F. MILLER, JR.,
Commissioner.

792 C. PYLE, witness, of lawful age, being produced by respondent, testifies as follows, being duly sworn:

1st Q. What is your name, age, occupation, and place of residence?

A. C. Pyle; I am 37 years of age; occupation, saw-mill man; reside in F't Madison.

2. Q. How long have you been in the employ of respondent, and how much of the time does your occupation require you to be at the mills?

A. I have been there 10 years, and my occupation requires me to be at the mill nine months of the year.

2nd. Q. How much time during the spring, summer, and autumn of each year or during the season of navigation of each year, do the rafts of respondents lay in front of respondent's mills above the upper pier? State fully.

A. The rafts lay in front of Atlee's mill at least eight months every year.

3. Q. How far will a nine-string raft project into the river be-
793 yond the upper pier, when lodged against the bank in an ordinary stage of water?

A. It will project four strings out in the river beyond the pier. I do not know the width of a string of logs.

4. Q. What observation, if any, have you made during the ten years you have been with respondent as to the course which steamers take in passing respondent's mill, and how far they generally run in an ordinary stage of water from the upper pier?

A. I have observed nearly all of the boats that have passed in the day-time. They generally run from seventy-five to three hundred feet from the pier.

5. Q. In any stage of water, how many steamboats, during the last ten years, have you seen pass the point where the upper pier is located?

A. I have never seen any, although my occupation has been right at that end of the mill, where I could see every boat that passed either up or down.

794 6. Q. How many rafts have you seen within the last ten years strike the gravel-bar at the mouth of French Creek? If you saw any, what course did they take after swin'ing off of the gravel-bar in relation to the upper pier?

A. They do.

7. Q. When the rafts extend beyond the pier into the river, do they not vari*e* greatly in the distance in which they extend beyond the pier?

A. That depends on the stage of water and size of raft.

8. Q. Suppose the water to be high, how would it be then—would they vari*e*?

A. Of course they would.

9. Q. Is not the water deep around that upper pier at all stages of the river?

A. I never measured it.

10. Q. Where do boats, in coming down the river, make the crossing to the Ill's shore; do they not make the crossing below the lower pier in the neighborhood of the Park House?

A. Some do and some do not.

795 11. Q. You state in your direct examination that boats pass the pier from seventy-five to three hundred feet distance from it. Are you still of that opinion?

A. I am.

12. Q. You never saw them pass nearer than seventy-five feet to the pier, did you?

A. I did not.

13. Q. Can you swear that boats have never passed nearer the pier than 75 feet?

A. I cannot.

14. Q. Your duties do not keep at the mill during the night, do they?

A. No, sir; they do not.

15. Q. Then you don't know where boats may have run in the night-time, do you?

A. I do not.

16. Q. You stated in your direct examination that you have seen rafts hit the gravel-bar. State, if you can, when that was.

A. I could not do that. It has been five or six years ago; long
796 before the upper pier was built.

Redirect examination by respondent:

1st. Q. What was the state of the weather when you observed the raft you speak of in your cross-examination grazing the upper pier, and what was the stage of water?

A. I can't state as to the stage of water, but there was a strong wind blowing on shore. There is no raft can strike the pier when there is no wind, in my opinion, because the current sets out from the gravel-bar at the mouth of French Creek.

2. Q. From your ten years' observation of steamboats passing up and down the river, what direction do you say steamers almost universally take when going down stream immediately after they pass the gravel-bar at the mouth of French Creek?

A. They set out into the stream a little, right at the mouth of French Creek.

797 Recross-examination by libelant:

1st Q. Do not boats sometimes, instead of setting out in the stream from the gravel-bar, pass down within seventy feet of the pier, down by the lower pier, and cross over to the Ill's shore below the lower pier, near the Park House?

A. I can't say as they do going down stream.

2. Q. In coming up do they not make the crossing from the Ill's to the Iowa shore at the point I have indicated, pass near to the pier, and so on up to the gravel-point?

A. Sometimes, if there is a strong wind blowing on shore.

C. PYLE.

Subscribed and sworn to before me this 3d day of September, 1872.

D. F. MILLER, JR.,
Commissioner.

798 CHARLEY P. BEARD, witness, of lawful age, being produced by respondent and duly sworn, testifies:

1st. Q. What is name, age, occupation, and place of residence?

A. My name is Charles P. Beard; am 31 years of age; occupation, that of a raft-pilot, boat-pilot for small boats; reside at Reid's Landing, Minn.

2. Q. When were you licensed as a pilot, and do you still hold a license?

A. I haven't been licensed on this river as a pilot. I was licensed as a pilot of boats on C'ippawa River.

3. Q. What experience have you, if any, in navigating the Mississippi River as a raft-pilot, and between what points?

A. I have had nine years' experience between Reid's Landing and St. Louis.

4. Q. How much of the time have you been engaged during the nine navigation seasons as a raft-pilot on the Mississippi River?

799 A. I have been under constant employment. I have not lost five weeks any summer.

5. Q. During that time how have you been operating rafts, with a boat or not?

A. With the exception of the last three seasons I have floated rafts. For the last three seasons I have towed them with boats.

6. Q. What acquaintance have you with the piers built by Atlees opposite their mills in this town?

A. I have full knowledge of them, with the water inside and out.

7. Q. What distance do you ordinarily run the rafts which you pilot from the upper pier?

A. I run from one hundred to two hundred feet.

8. Q. What acquaintance have you with the gravel-bar or delta at the mouth of French Creek?

A. I have got a knowledge of the bar.

9. Q. What direction does the water take immediately after passing said gravel-bar?

800 A. Immediately after passing it it runs very near with the bank of the river, and gradually sets across to the Ill's shore.

10. Q. What is the width of the channel between the upper pier and the bar to the left?

A. I never measured it, but to the best of my knowledge it is six hundred feet.

What obstruction, if any, are said piers to the navigation of the Mississippi?

(Objected to as leading.)

A. The piers are no obstruction as I can see. A person can make the bank of the river an obstruction, if he choose to run out of the channel.

Cross-examination by libelant:

1st Q. Have you not known of rafts hitting or grazing that pier?

A. No, sir; I can't say that I do. I came down the last summer, and by carelessness struck the gravel-bar; the raft swung half way around. I cross-pulled it, and got out without hitting the pier.

2. Q. At a high stage of water cannot rafts run over the gravel-bar?

801 A. Yes, sir.

3. Q. Is there not a deep bend in the Iowa shore, a little distance above the gravel-bar?

A. There is.

4. Q. Does not the bank from the bend run along, bending in a little to the Iowa shore until it reaches the lower pier?

A. Not from the bend, I cannot say it does.

5. Q. Does not the bank from the lower pier make a point out into the river?

A. In fact it is all a point from the gravel-bar down to the lower pier.

6. Q. Suppose the wind to be blowing strong into the Iowa shore, might not the pier constitute an obstruction to the navigation of a raft?

A. Yes, sir, it might, on account of a raft getting out of its place; the wind will blow raft or floating-craft out of the channel.

7. Q. If the wind did blow a raft in toward the pier would not
802 the navigation of the raft in that place be more dangerous with the pier there than if it were not there?

A. Most assuredly, it would.

8. Q. Do not boats make the crossing to the Ill's shore below the lower pier?

A. Just about from the lower pier.

9. Q. What is the depth of water around the upper pier?

A. About sixteen feet, to the best of my knowledge, on the outside of the pier. There is about fourteen feet of current inside of the upper pier.

10. Q. Have you not seen boats pass right close to the upper pier?

A. Not within a hundred and fifty feet.

11. Q. How often have you seen boats pass there?

A. I see from 12 to 15 every season pass the pier; that is, I have been on that many each season myself. My trips average 12 to fifteen each season. I have seen other boats pass there which I was not on.

12. Q. Is not your knowledge of boats passing there confined to
803 your observation when passing down on rafts from your home in Minn. and your return?

A. Yes, sir.

13. Q. Do rafts vary their course according as the river is high or low?

A. In a great many places they do. For instance here at F't Madison in high water they run down in the middle of the river; in low water they come in the bend.

14. Q. How many rafts have you run by the pier since it was built?
A. I coulde'nt say, but to the best of my knowledge I have run fifteen or eighteen rafts by the pier.
19. Q. Have you ever piloted a steamboat passed that upper pier?
A. I have.
20. Q. What boat?
A. The Union, Barton, C. Rogers, Clark, some other steamboats, but I do not remember them; one or two of them were splendid boats, the Barton especially. It requires the same capacity to run a small boat that it does a large one.
804 21. Q. They were not first-class boats were they?
A. They were first-class raft-boats.

Re-direct examination by respondent:

1st Q. Do not floating-rafts generally tie up when it is too dangerous to run?
A. Pretty near always. If a floating-raft could be held out of this bend there would be no danger of her running into the pier.
(Latter part of answer objected to, because not responsive to the question.)

CH'S P. BEARD.

Witness-fees, 1 day, 1.50; paid by respondent.

Subscribed and sworn to before me this 3d day of Sept., 1872.
D. F. MILLER, J'R, *Com'r.*

805 WILLIAM A. DUSTIN, witness, of lawful age, produced by respondent, being duly sworn, testifies as follows:

1. Q. What is your name, age, place of residence, and occupation?
A. My name is William A. Dustin; am forty-five years old; occupation, raft and steamboat pilot.
2. Q. When were you licensed as a steamboat-pilot?
A. In August 19th, 1862. I was licensed, first in 1857, and let it run out, and did not renew it until 1862.
3. Q. How much experience have had as a steamboat-pilot, and on what rivers and between what points have you been running?
A. My time put in as steamboat-piloting for the last ten years, four months and a half is the least of any season; seven months and a half is the longest; first-class passenger-boats from Savan'ah to St. Paul; tow-boats, St. Louis, Cheesawa River, and St. Croix River; first-
806 class steamers for those rivers. Savan'ah is 30 miles below Galena. I have passed this point from seven to ten times during my piloting. Previous to that time I have been floating rafts to St. Louis or some points above.
4. Q. How often previous to that time have you floated rafts passed this point?
A. About four times a season for 12 years, that is, to the best of my knowledge.
5. What acquaintance have you with the upper pier at Atlee's mill?
A. I have seen the pier and known where they are located.
6. Q. What obstruction do said piers constitute to the steamboat navigation of this river, if any?
(Objected to as leading.)
A. Everything in the river is an obstruction. I don't consider the piers any bad obstruction to steamboat navigation.

Cross-examination by libelant:

1st Q. What business are you engaged in now?

A. I am piloting on the steamer Rogers.

807 2. Q. Is she a raft-boat?

A. She is at present.

3. Q. For whom are you *imployed*?

A. For Cha's P. Beard.

4. Q. Was he the last witness?

A. He was.

5. Q. Is he not in Mr. Atlee's *imploy*?

A. I do not know, sir. He said he is a-running a raft for so mus*t* a string for Mr. Atlee.

(Objected to as hearsay.)

6. Q. Do you not principally pilot raft-boats and tow-boats?

A. Principally passenger-boats.

7. Q. Where?

A. From La Crosse to Eau Claire, in Chippawa River, in Wis.

8. Q. Have you not for the last few years piloted boats on the Upper Mississippi River, from the neighborhood of Galena up?

A. Most of the time.

9. Q. Have you ever piloted a steamboat pas*sed* the upper pier since it was built?

A. I once piloted the Minnesota.

808 10. Q. During the last ten years, have you piloted steamboats pas*sed* F't Madison more than from 7 to ten times?

A. Somewhere in the neighborhood of that.

11. Q. What is the depth of water around that upper pier?

A. Do not know; never measured it.

W'M A. DUSTIN.

Witness-fees, 1 day, $1.50. Paid by respondent.

Subscribed and sworn to before me this 3d day of September, 1872.

D. F. MILLER, J'R,
Commissioner.

P. COLES, witness, of lawful age, being duly sworn, produced by respondent, testifies as follows:

1st Q. What is your name, age, occupation, and place of residence?

A. My name is P. Cole. I am fifty-five years of age. Carpentering is my trade. For the last nine years I have been working for Atlee, at his mills. Place of residence, F't Madison, Iowa.

809 2. Q. How long have you resided in this town?

A. I came here in the spring of 1838, and have resided here ever since.

3. Q. What is the custom of respondent, as to having rafts of logs lying in front of his mill and above the upper pier, during the season of navigation, and how far do said rafts frequently project into the channel beyond the upper piers?

A. The universal custom has been to keep his logs there where the upper pier now stands, before and since the pier was built. Sometimes he has rafts in there ten and twelve strings wide. A ten or twelve string raft frequently extends for five, and sometimes six, strings out in the river, beyond the upper pier; it is according to the stage of water. A string of logs is about sixteen feet in width.

4. Q. What size is the raft that is now lying above the upper pier, opposite Atlee's mill; and what is the stage of water now; and
810 how far does said raft project into the channel beyond the pier?

A. To include the loose logs that were lying in there before the raft came in, I should guess there are 12 strings of small logs, and the raft extends a little over six string' outside of the pier. I should consider the stage of water rather low; not the lowest, for I have seen it lower.

5. Q. How far outside of the far edge of the present raft do steamers usually run?

A. As a general thing they run at least a hundred feet outside of where the raft now stands. They may sometimes come nearer, but very seldom.

6. Q. During the nine or ten years of your employment at Atlee's mill, how many steamboats have you seen run over the point where the upper pier now stands, prior to its construction?

A. I do not think I ever saw any.

7. Q. Do you know where the gravel-bank or delta is, at the mouth of French Creek? If so, what direction does the water take immediately after passing that gravel-point?

811 A. I know that the bank has been washing away ever' year. Every high water it washes away more or less, but how much I cannot say.

9. Q. What would you estimate the change to be?

A. I should think between the piers, it has washed away 10 feet within the last nine years.

Cross-examination by libelant:

1. Q. Are you in Mr. Atlee's *imploy* at the present time?

A. Yes, sir.

2. Q. Have you ever been a pilot or steamboatman?

A. No, sir. I have run a ferry-boat at this point, and have frequently went to Montrose, Nauvoo, and around with her.

3. Q. You have spoken of rafts lying in front of Atlee's mill. Have not his rafts varied greatly in size?

A. They get smaller as he uses off of them.

4. Q. Have there not been many times since you have been at
812 work for Mr. Atlee, when he has had very few logs between where the pier now stands and his mill?

A. He does not usually keep any logs between the pier and the mill. The logs are kept above the pier—just below the bar. There is just about room enough between the gravel-bar and pier for a raft.

5. Q. Is it not generally open water between the upper pier and the mill?

A. It is most of the time open water.

6. Q. Is not this true of the space between a line drawn between the two piers and the shore?

A. No, not all of the time. Occasionally, when he has a raft of logs he wishes to save, he puts them between the two piers.

7. Q. Does not he generally keep his logs above the upper pier, and between that and the gravel-bar?

A. That has been his custom except when he had more logs than he could use, and then he had dropped them below there—between the piers.

813 8. Q. Has he not, within a few days past, brought down a large raft to his mill?

A. I believe he got a nine-string raft in last night.

9. Q. Prior to this did he not have simply a few loose logs lying between the pier and the shore?

A. I think there were about three string' of logs lying in there last night.

10. Q. That would not fill the space between the pier and the shore, would it?

A. No, sir; not between the pier and the shore, for there were no logs there.

11. Q. Do his logs ever extend directly in front of the pier and into the river?

A. Very seldom.

12. Q. Is not the pier below the mill?

A. I guess, to draw a line due north and south, that the pier would not be entirely below the big mill. That is my opinion. I have never examined.

13. Q. Is the gravel-bar above the pier covered with water at the present time or not?

A. None of it except the point which runs away out into the river.

814 14. Q. How much of it is covered with water?

A. That is a very hard question to answer, because I do not know how far you claim the gravel-bar extends out. From the bank or C., B. & Q. R. R. bridge to the edge of the water, it must be 100 or 150 feet.

15. Q. Can you swear that boats do not sometimes run closer to the pier than the distance you have named in your direct examination?

A. I don't think I have ever noticed, with one exception, them run nearer the 100 feet from the pier. That exception was the other day. I believe it was the Northwestern, with a barge in tow, coming up, and there was a ten-string lumber-raft going down, and the boat passed between the raft and the pier. I think it was some near 100 feet.

16. Q. Have you ever seen rafts hit or graze that pier?

A. I don't recollect of ever seeing but one raft graze it.

17. Q. Have you not seen boats land inside of that pier?

815 A. I never did, except little raft-boats that come there to take on pine wood.

18. Q. What are your duties about the mill?

A. Kind of a superintendent.

19. Q. How near to that upper pier does the channel of the river run?

A. I don't know as I am a proper judge of the channel of the river.

20. Q. How near to the upper pier is the current of the river?

A. I guess there is a current from the pier to the island?

21. Q. You still say that the current of the river runs quartering from the gravel-bar over towards the island?

A. I say, as I said before, that it verges from the gravel-bar toward the island from the Iowa shore—I would say not very much—until it get' about opposite the lower pier.

Redirect examination:

1st Q. What was the state of the weather when the raft you speak of grazed the upper pier?

816 A. There was quite a brisk east wind blowing toward the Iowa shore.

2. Q. How many rafts, altogether, have you probably seen pass that pier in all kinds of weather?

A. I would be safe in saying over a thousand.

3. Q. If you have ever seen any rafts strike the gravel-bar, please state what course it took in relation to the upper pier after passing the gravel-bar.

A. There was one raft struck the last summer, and after she had passed about a third of her length, it run on to the gravel-bar so hard that it stopped. Mr. Samuel Atlee and myself went down on the log-raft in front of our mill. They swung the hind end of the raft out into the stream, and that threw their raft off from the bar, and the forward end of it went into Mr. Atlee's logs and boom. After we got them separated, their raft floated down and missed the pier at least ten feet.

817 Recross-examination by libelant:

1st Q. Was it low or high water when that raft hit the gravel-bar?

A. It was what I would call low water—probable the same stage of water as it is at this present time.

2. Q. How many months of the year does the rafting season last?

A. It averages about seven or eight months.

3. Q. There are days, are there not, when rafts do not pass by here?

A. Yes, sir.

P. COWLES.

Subscribed & sworn to before me and in my presence by P. Cowles this 3 day of September, 1872.

D. F. MILLER, JR.,
Commissioner.

818 JAMES BEST, of lawful age, being produced, and by me duly sworn, testifies as follows:

1. Q. What is your name, age, occupation, and place of residence?

A. James Best; 35 years old; a steamboatman; mate on a steamboat; Montrose, Iowa.

2. Q. How long have you been engaged in steamboating, and on what river or rivers, and between what points?

A. I have been engaged in steamboating for the past twelve years; commenced running the river in the year 1858. Have been running on the Mississippi River, between S't Louis, Mo., and S't Paul, Minnesota, principally. Have been acting as mate since 1861.

3. Q. Where were you on the night of the 23d of Apr., 1871, and in what capacity were you acting?

A. I was on board the steamer Phil Sheridan, acting as 1st mate.

4. Q. What accident occur'ed on said evening to said steamer, or her barges, and where did it occur?

A. She sunk a barge on a pier opposite Atlee's mill.

819 5. Q. What time in the day or night did said accident occur, and what was the state of the weather?

A. I can't name the hour it occurred. I was asleep, *asleep*. I could come anywhere near the time, it was in the fore-part of the night; the second mate was on watch. I believe the weather was good. It might have been a little windy, but I do not recollect it now. I can't recollect whether it was starlight or dark.

6. Q. When did you first see the barge after said accident occur'ed? and please give a minute description of the damages sustained by the collision.

A. When I got on deck the barge was just going out of sight; just sinking; was opposite Steward & Bonnell's shingle-mill—said mill now owned by respondent—& cannot tell how much the barge was injured. The break was principally under water. As we unloaded the barge it, of course, came up out of water.

7. Q. In what condition was the roof of the barge just after the collision?

A. I think the roof of the barge was all right until we broke it with the fender of the steamer.

820 8. Q. What distance from that upper pier do steamboats usually run in navigating the river?

A. That is rather a difficult question to answer. I should judge that they do not generally run nearer than 75 or 100 feet of the pier.

9. Q. How much, if any, do the Atlee piers interfere with the steamboat navigation of the river at an ordinary stage of water?

A. I should think that they are no obstruction at all in an ordinary stage of water.

10. Q. What was the stage of water when said accident occur'ed?

A. I do not reccol'ect the stage of water exactly. I know we had to light over the rapids.

Cross-examination by libelant:

1st Q. Have you been on the river for the last 18 months?

A. I left the river the 20th day of June, 1871.

2. Q. Do not boats light over the rapids sometimes when the water is well up?

A. We light over the rapids sometimes when there is five feet of water on the rapids. Some boats draw more than five feet

821 when loaded. I could not say how much water the Phil Sheridan draws.

3. Q. Does she not draw four feet?

A. She draws over four feet loaded, but does not draw four feet light.

4. Q. Did you examine the barg' particularly after the accident?

A. I did not.

3. Q. Can you say positively the roof of the barge was broken by the fender of the Sheridan?

We landed the barge stern up stream. We backed away from it, and we had to round to. We run up the river in search of a flat-boat to take the freight off. We did'nt find a flat-boat, and coming along inside of the barge with the steamboat, the forward fender broke the cargo-box or roof. This, I think, was on the opposite side of the break in the barge.

6. Q. Was not that break by the fender of the Sheridan unavoidable?

A. Well, I should say it was. It might have been avoided by

822 taking up the fender.

7. Q. Were you not all very busy at the time, and doing the best you could with the barge at the time, under the circumstances?

A. Yes, sir.

JA'S BEST.

Subscribed and sworn to before me this 3d day of September.

D. F. MILLER, *Com'r.*

823 In U. S. district court for 1st judicial district of the State of Iowa.

N. W. U. PACKET CO.
vs.
SAMUEL ATLEE.

I, D. F. Miller, j'r, a commissioner appointed by the Hon. J. M. Love, (judge of the above court,) in persuance of an agreement of att'ys in above suit, do hereby certify that, on the 27th day of Aug., 1872, (and continuing from day to day until the 4th of Sept., 1872,) in the presence of Howell and Rice, att'ys for libelant, and McCleary, Miller and McCleary, att'ys for respondent, I proceeded to take the testimony of the following-named witnesses at the court-house in F't Madison, Iowa: B. W. Davis, George Anderson, John Atlee, B. F. Anderson, James W. Campbell, A. B. Woodward, James W. Campbell, (recalled,) E. G. Wilson, R. H. Heath, Hiram Finch, F. Kiel, F. Tannue, John Scott, P. Okell, S. J. Atlee, George Anderson, (recalled,) B. F. Anderson, (recalled,) William Griffey, C. Pyle, C. P. Beard, W'm A. Dustin, P. Cole,
James Best, who were then and there sworn and examined in my
824 presence, and such examination reduced to writing by me, and, after having be*ing* by me read over to said witnesses, the same was subscribed and sworn to by them, respectively, in my presence, and their testimony is now herewith returned.

Given under my hand this 5th day of September, 1872, at F't Madison, Iowa.

D. F. MILLER, J'R,
Commissioner.

Commissioner's fees, $65. Paid by respondent, S. Atlee.

(Endorsed:) Filed Oct. 10, 1872. George B. Corkhill, clerk.

825 District court of the United States for the district of Iowa, in admiralty.

THE NORTHWESTERN UNION PACKET COMPANY
vs.
SAMUEL ATLEE.

Depositions of witness, taken before J. L. Rice, a special commissioner appointed by the court to take depositions in said case, commencing on the 21st day of August, 1872, on the part of respondent.

Present, J. Ham. Davidson, esq., and Howell & Rice, att'ys for libellant; and McCrary, Miller & McCr*ea*y, and P. T. Lomax, esq., att'ys for respondent.

Index of deposition of—

J. W. Wright.....
Milo A. Penden.....
E. H. Worrell.....

826 THO'S W. WRIGHT, witness, of lawful age, for respondent, being by me first duly sworn, deposes and says, in answer to the following interrogatories:

Ques. 1. What is your name, age, and place of residence?

Ans. Thos. W. Wright; age 36 years; and live in F't Madison, Iowa.

(Taken down in narrative form by consent of parties, except where parties desire to have question written out.)

I have lived in F't Madison since the year 1851, and have been in practical engineering on steamboats since that time. I have engineered on the ferry-boat of F't Madison three or four years. This was eight or nine years ago. I have also engineered on a number of other boats since. I was on the ferry-boat from La Crosse to St. Paul, and between F't Madison and Rock Island, and other places.

I know where Atlee's saw-mills are, near the town of F't Madison.

827 I have seen the upper pier which is used as a boom for Atlee's mill. I saw it the first time a year ago last summer, or about that time, at a low stage of water. I think the pier stands above water between five and eight feet; cannot tell exactly, never having measured. The pier can be seen in day-light in going up and down the river, in the steamboat-channel of the river in front of Atlee's mill. I am now running as engineer on the Annie Johnston. Cannot say who owns her. I have known the channel in front of Atlee's mill for 12 or fifteen years, and have noticed it more particularly since then than I did before. I know of a delta or bar formed by the mouth of a creek known as French Creek, situated about five or six hundred feet above Atlee's mill. I cannot say that it affects the channel of the river, but the channel strikes the bar and descends angling from there from the Iowa shore to the Illinois shore.

828 Cannot say exactly how far delta or bar extends into the river. Cannot say whether it extends farther out than the pier or not. I never noticed it particularly. At the present stage of water the channel may be all the way from twenty-five yards to seventy-five yards from the pier, but certainly twenty-five yards. The channel in front of the pier is probably two hundred yards wide. I never measured it at the present stage of water. We do not generally run within from thirty to fifty yards of the piers. This is my opinion. I have never measured it. The water now is at a pretty low stage.

In the last twelve or fifteen years boats have been in the habit of running within from thirty to fifty yards of the pier, with the exception of *the* water when they run still further from the piers, if they wish. I would not like to say whether the pier is an obstruction or not. You can hit it, of course, or you can run to the side of it, when the water is high, going to get to the side of it so as to hit it.

The pier is used to fasten a boom to *to* secure the logs at Atlee's mill.

829 There are other piers along the river for *for* booms for saw-mills. The rafts that Mr. Atlee has had there have, some of them, projected farther out into the river than the pier; some have not. While a pilot and engineer on the ferry-boat I have passed along in front of the place where the piers are. The piers were not there at the time.

I don't know that I have ever seen within my memory a boat pass where piers now stand. They may have done it.

Cross-examination:

I have not now, and never had, a license as a steamboat-pilot.

When on duty as a steamboat-engineer, my post of duty is in the engine-room, or about there whilst on watch. I have never measured or sounded the water between the outside of the pier and the opposite shore. I do not know exactly what the depth of the water is around the upper pier. At the high stage of water since piers were
830 made, I have seen water run over the pier. I saw it run over the pier two years ago, in April, 1871. There was a big stage of water, not the stage, but the river was full.

Cannot say how near water was to top of pier on Apr. 23, 1871. In descending the river in the night-time, cannot say how far piers can be seen. That would depend on the night. In a dark night they could not be seen so far as in a light one. I never saw a light on the pier prior to the accident. Have seen light on the pier since the accident frequently.

At an ordinary stage of water boats can run up to and land where piers are on the outside, when there is two or three more feet of water than there is now. Since the piers were built we have landed between the piers on the shore with the steamer W'm White, a raft-steamboat. When we made such landings it was in the spring, when water was high, and in the fall, when water was low, we landed between the two
831 piers and took on wood, off and on, during the summer; probably as often as once a month. Below the upper pier is what is called "nigger-heads," which are situated between the piers. I know it because we have had to span off of the rocks when we wanted to get wood for the steamboat W'm White. I think I have seen lights on the rafts at Atlee's mill. At the time the accident to the barge occurred there was nothing to prevent boats coming down the current to where the piers are, that I know of. On April 23, 1871, when the water was high, boats could run over the bar extending out from French Creek, to a certain distance I cannot give you. I never knew, to my knowledge, boats to pass nearer to the pier that twenty-five yards. I do not claim to be a pilot in any sence. There are mill-piers at Burlington, Alma, Lyons, Clinton, Rock Island, Davenport. I do not know how they stand with reference to the channel. At Burlington, I think, the pier stand' straight with the river.

832 Sam'l Atlee is a brother-in-law of mine.

T. W. WRIGHT.

Witness waives his fee.
Subscribed and sworn to before me this 21st day of August, 1872.

J. L. RICE,
Commissioner.

833 MILO A. PENDON, witness, of lawful age, for respondent, being by me first duly sworn, deposes and says, in answer to the following interrogatories:

My name is Milo A. Pendon; age, 39 years; and live in Montrose Iowa; have lived in F't Madison. I moved there in 1863, and left there four weeks ago last Tuesday. I followed piloting in F't Madison, in the Jeannie Whipple, Keithsburg, Muscatine, and others. I have had a license as pilot, and now have one.

I am perfectly well acquainted with the channel about Atlee's mill.

There is a gravel-bar at the mouth of the creek above Atlee's mill.

Ques. How does the channel of the river run, with reference to the bar and the upper pier at Atlee's mill?

Ans. In coming down there we round the bend abov' the gravel-bar

when we get to the gravel-bar, our boat should lay headed outside the upper pier; when we run until we get abreast of the upper pier, or a little below it, then we head straight down the middle of the river.

834 Ques. How far does the channel lead you from the upper pier?

Ans. We can run close to it as we can keep, probable 200 feet away from it. It is good water from the pier all the way out to the bluff-bar. I should think it was 300 feet from the pier to the bluff-bar. I cannot say it is good water from the pier to the island; it does not look to be; have not been there in low water. I have frequently seen rafts when the pier and before the piers were built, and am not positive, but think I have seen rafts standing out into the river as far as the piers are, and some farther.

The water seems to be good where the pier stands. The upper pier can be seen four or five miles up the river and two miles down the river in day-time. I saw them they were building. I saw the pier the next day or two after the injury to the Jack Reaney. My idea would be that it stood four or five feet above water at the time

835 of the accident. When it stood four or five feet above water it could be seen about the same distance as in low water. I think the gravel-bar was high enough to let the Sheridan run over it about the time of the accident. When I saw the barge one side of it was run up on shore; the other end lay in the water so that the deck was covered.

Ques. If a pilot has been off any part of the river for two years and not seen the part of the river he is about to run over, and who has not been made acquainted by any means with any change in the channel, or any obstructions near the channel, can he safely navigate a vessel in such part of the river where he has not been, and with which he has been unacquainted for two years?

(Objected to as being incompetent and as being a supposition, without any foundation or fact in connection with this case.)

836 Ans. A pilot that has been licensed as long as Mr. Gall is supposed to be safe and competent at all times.

(Def't's att'y moves to strike out this answer as not responsive.)

Ans. That is all the answer I have to offer.

Ques. If you were off the river for two years, or two seasons for steamboat running, does the river maintain its channel so that a pilot can run after he has been off two years as well as if he had not been off?

Ans. In high water, yes; in low water, no.

Que. In a moderate stage of water?

Ans. Not when river is low enough to hit bars.

Ques. Suppose, during the absence of a pilot from the Upper Mississippi for one or two seasons of running, owners of saw-mills should build along the river, along the edge of the channel, piers or booms to protect their lumber, would a pilot thus absent and without knowing of such piers, be competent to navigate boats and barges in the vicinity of these piers?

837 Ans. That would be owing to circumstances. If there were any signals to notify him he would; if not, he would be more liable to hit them. I think we commenced running about the 24th of March, that year of 1871, though boats hardly ever commenced until about the first of April; the through packet-boats commenced running that year about the first of April. The Phil Sheridan which had the barge in tow was one of the through boats.

Cross-examination:

Ques. Above ordinary stage of water, descending boats in running the bend and by the upper pier ordinarily pass within, about what distance of the pier?

Ans. That would be owing to the number of barges they were towing and the width they took up. A boat with four (4) barges, two on each side would reasonably have to pass within fifty yards of the pier,
838 which is about as far away as they could get; they ordinarily pass closely. In my own part I have never seen *any* particular; I have sometimes run pretty close to it and sometimes not so close.

Ques. What effect has the reef upon the current with reference to causing boats to flank in descending, and when on the reef?

Ans. The reef is only near 300 feet from the pier; the reef being otherwise called the sand-bar, it does not cause the boat to flank in low water. In high water the boat will flank towards the piers.

Ques. When was upper pier constructed?

Ans. In the winters of 1870–1871.

Ques. Did you pass it that spring prior to the accident?

Ans. Yes, sir; a number of times.

Ques. Any of those times in the night?

Ans. Most always in the night going down.

Ques. Did you ever see any lights on it before the accident?

Ans. No, sir; not that I reccollect of. I must have passed it
839 within one or two nights of April 23, 1871. I was making three trips a week.

Ques. With the water at about the stage which prevailed Apr. 23, 1871, how far could you see that pier in descending in the night-time, as it was without any light on it?

Ans. It would be owing to the kind of a light it was. Some nights you could see it 500 yards, and some nights you could not see it four lengths of the boat.

Ques. In an ordinary hazy night without moon, at about eleven o'clock p. m., how far do you think it could be seen?

Ans. I have seen such nights that you could not see it very far; some nights when I could not see it at all.

Ques. Was there anything there to give notice of danger to a pilot who did not know of the pier?

Ans. Not previous to the accident that I recollect of.

Ques. How does that pier stand with reference to the navigable channel of the river?

Ans. It stands pretty close to it.

840 Ques. Does the navigable channel extend to the pier?

Ans. I have landed directly above it, so that stem of boat was against it. I am not positive that boat was against it, but it may to best of my knowledge.

Ques. Is it navigable water where that pier stands for steamboats?

Ans. I believe it is. I landed, as I stated before, against it or very near it, and did not get aground.

Ques. Before the pier was constructed did you ever run over where piers stand?

Ans. Yes, sir. I have landed every foot of the way from the Park House to within the river stand; that was in high water, mind you.

Ques. If that pier was now removed could not steamboats above ordinary stage of water pass and repass right over the spot where it now stands.

Ans. Yes, sir.

Ques. What does that pier constitute with reference to the navigation of the river, in your judgment as a pilot?

841 (Objected to as not matter of cross-examination, and not competent.)

Ans. I don't see how it can constitute anything but an obstruction.

Ques. What effect, if any, had it upon the perils and dangers of navigation?

Ans. There are times, under certain circumstances, when it is liable to sink boats and barges.

Ques. If the wind was blowing towards the Iowa shore, what effect would it have on a descending boat?

Ans. It would have a tendency to blow her on it.

Ques. Would it be more, or less, dangerous if the pier was not there?

Ans. It would be less dangerous if the pier was not there.

Direct examination:

I should consider the rafts that I have seen lying at the mill obstructions to navigation; not dangerous, though.

Ques. You have said you do not think a raft of logs dangerous.

842 Suppose a steamboat should run a barge against the end of a raft of heavy logs, would there be no danger from such colliding?

(Objected to as immaterial and irrelevant.)

Ans. That would be owing to circumstances.

Ques. Did you ever know of a boat or barge being injured by colliding with a raft?

(Objected to as immaterial.)

Ans. Don't remember that I ever did.

Ques. Suppose instead of a pier there had been a raft of heavy logs against which the Jack Reany collided, what would have been the probable consequence of such colliding?

Ans. The probable consequence would have been that it would not have hurt her materially.

Ques. In whose employ are you now?

Ans. Not employed by any one at all.

Recross-examination:

Ques. When rafts are moored as you describe these at Atlee's landing and elsewhere along the shore, do they not in the night-time have lights on them to warn steamboats and other rafts of their location?

Ans. Almost invariably.

MILO A. PANDEN.

Witness-fee, $1.50; mileage, 1.20—$2.70.

Subscribed and sworn to before me this 21st day of Aug., 1872.

J. L. RICE, *Commissioner*.

843 E. H. WORRALL, witness, of lawful age, for respondent, being first duly sworn, in answer to the following interrogatories, deposes and says:

My name is E. H. Wornall; age, 33 years; and live in Keokuk, Iowa. My occupation is that of a civil engineer. I am employed by the Government of the United States as a civil engineer on the Des Moines Rapids of the Miss. River, generally known as the Lower Rapids, in the construction of the improvement of the said rapids.

Ques. Did you with some assistants make a survey of a portion of the west bank of the Miss. River, in front of Atlee's mill, near F't Madison; and, if yea, when did you and they do it, and when was it made?

Ans. I did make a survey last March. Col. J. A. McDowell, of Keokuk, was with me. He is a civil engineer, too; also Major A. H. Bumban was with me, also Michael Costollo and Mr. Sam'l Atlee were with us and assisted us.

844 Ques. Did you survey particularly the delta at mouth of French Creek and the two piers?

Ans. I did.

Ques. How far does the upper pier stand from the main bank of the river?

Ans. The pier stands angling with the bank of . The upper corner is 127 feet from the bank; the lower corner, 124 feet from the bank; width of pier, 22 feet at both ends, with a starling at upper end. The pier is 29 feet long. Pier 13 feet above water, at time of survey. Water inside of pier is seven and $\frac{4}{10}$ feet in one place at upper inside corner, and at lower inside corner is 8 feet. Water at upper outside corner is 12 feet. Water at lower outside corner is ten and $\frac{7}{10}$ feet. Ten feet outside outer edge of pier is 16 feet in one place upper end, and fourteen at lower end. Thirty (30) feet from pier we found no bottom with a twenty-foot sounding-pole. Right opposite the pier the bank is bluff, with a

845 slope of about one to one. Bank is about 4½ to five feet above the slope of the river-shore. I speak of the measure of the height of the bank from memory.

Ques. How far was it from the inside of the pier to the water-line at the time of the survey?

Ans. From upper corner opposite to shore seventy-seven (77) feet. From lower corner to shore seventy-four (74) feet.

Ques. Did you make diagram of the survey you made?

Ans. I did, and I file it as part of my depositions, marked Exhibit A. (The said exhibit objected to as incompetent by libellant's att'y.)

Ques. Please tell us how far the same shows the extension of the delta or gravel-bar from the mouth of French Creek from the bank into the river.

Ans. Three hundred and forty-one feet, (341.) Thirty (30) feet out from the gravely point we found fourteen (14) feet of water. We found the channel so strong we could not go any further. The ice was running thick in the river. Our measurements went simply to the surface

846 of the water, and then we wrote out 30 feet, and found 14 feet of water, and it was a gradual slope from the surface of the water out that distance.

Ques. I see on the diagram a broken dotted line on which is written shore-side of channel. How far is that line out in the river from the upper pier?

Ans. Twenty (20) feet.

Ques. Why is that line marked on your map as shore-side of channel?

Ans. To show the inside edge or nearest side of channel to the shore.

Ques. I see on your diagram here nineteen cross-sections or blue lines running parallel to each other, and at right angles to the end or base line running from the bluff-bank to the broken line on which is written shore-side of channel. What do these section-lines indicate, if anything?

Ans. The lines you inquire about show surface of water at time of survey at each point when taken.

847 Ques. Crossing the blue lines above mentioned, are a series of irregular black lines, (not straight lines.) What do they indicate?

Ans. The black lines are intended to show the surface of the ground

with reference to the plane of the elevation or stage of water at the time of the survey.

Ques. Then these black lines show the form of the surface of the earth both out of water and under water, from the bluff-bank to the broken line along which is written shore-side of channel?

Ans. They do. It shews the shape or slope of the shore from the bluff-bank to the edge of the water, and the bottom of the river from the edge of the shore to the edge of the channel.

Ques. Then I would judge from the looks of these black lines that near where the upper pier stands there is a gradual rise from what you have marked on the diagram as the shore-side of the channel until you get to the water's edge in this shore?

Ans. There is, as my notes show.

848 Along the broken line on which you have written shore-side of channel, are number of figures, 14, 15, 16, and so on. What do these figures indicate?

Ans. The depth of water at that distance from shore at times of survey.

Ques. On one part of your diagram I notice is written in words and figures, scale 100 feet to the inch. Will you please explain how that one inch is to be applied in measuring any part of your diagram?

Ans. It is impossible to show actual measurement of surveys on paper with reference to the actual space; consequently we reduce our measurement from feet to inches. In this diagram one hundred feet of actual measurement is measured by one inch of actual measurement on the diagram.

Ques. What does the dark-shaded lines in black, nearest the location of Atlee's mill, represents?

Ans. The continue of the bluff-bank of the river.

849 Ques. I see a broad-shaded blue line on the diagram, on which is written, shore of river at time of survey. What does that indicate?

Ans. That indicates shore of river at time of survey; that shews edge of water at that time.

Ques. Tell me why you made that broken line and wrote over it shore-side of channel?

Ans. To indicate as permanently as possible the deep navigable water of the channel of the river above, opposite, and below Atlee's mill.

Cross-examinations:

Ques. Are you now, or have you ever been, a pilot on the Miss. River?

Ans. No, sir.

Ques. Is the channel a technical phrase in use among civil engineers, or d'es it belong more especially to pilots?

Ans. The channel is a technical phrase among civil engineers to indicate the deepest water, and of course, navigable passage of a river. I can't answer as to pilots.

850 Does that line marked shore-side of channel indicate the deepest water found within the limits of your survey, as represented by the plat?

Ans. It does.

Ques. Is it not possible, then, that beyond that line the depth of water steadily decreases towards the farther, or Illinois shore, and that that line in reality represents the center and deepest point of the navigable channel, instead of the shore-side of the channel?

Ans. I have some reason to believe that it does not represent the center of the navigable channel. We sounded thirty feet from upper pier with a 20-foot pole, and found no bottom; consequently the inside edge of that channel as represented does not show the deepest water.

Ques. Did you make any soundings, or measurements, out beyond that line, besides the one opposite the pier?

Ans. I did, but none recorded.

Ques. What depth of water do you call navigable here on the Mis.?

851 Ans. Five feet. I take my authority from Government instructions, in regard to the work I am at present upon.

Ques. Then there was not navigable water at the time of your survey inside the line marked shore-line of channel?

Ans. There was at some places, entirely with reference to depth, but not with reference to current.

Ques. What do you mean by saying not navigable with reference to current?

Ans. The line of current above the delta of French Creek strikes obliquely against said delta and is turned to the left, gradually towards the Illinois shore. A boat following that current would continually keep in deep water.

Ques. Do you speak of the current being thrown off from the delta towards the Illinois shore, from the light obtained from observations made during that survey, or by frequent observations through various seasons and at different stages of the water?

852 Ans. From observations during the survey of that particular locality, and considerable experience of the effects of bars, currents, and shoals, not only in the Miss. River, but also of other rivers of the United States.

Ques. At the height of water which prevailed when your survey was made, how high above the surface of the water was the general surface of the delta out beyond the red or base line of your survey.

Ans. Two (2) feet as the average height above water. The delta is almost perfectly flat.

Ques. How much of a rise in the river would it have taken to have covered the entire flat part of the delta outside the base-line of your survey?

Ans. About two feet and a half ($2\frac{1}{2}$) to cover it entirely.

Ques. Suppose the water had been at such a stage that its surface was within five feet of the top of the upper-pier, what depth of water would that then have been over the surface of the delta outside

853 your base-line?

Ans. Six feet on top of the delta.

Ques. Was this survey made on the ice?

Ans. The base-line was run on the shore. Part of the measurements were made on land and part on the ice, and some in a boat—great care being taken with all measurements made in the boat. Soundings for bottom of the river were made, some through the ice, and some from the boat; cannot be positive what was made in boat, and what on the ice.

Ques. To the best of your judgment how does the height of the water at this date (August 26, 1872) compare with the height of the water when the survey was made at F't Madison?

Ans. I can't tell; can't give even a guess.

Ques. At that time and at that point how much was it, if any, of low-water mark?

Ans. From information received from reliable parties, it was two

854 feet above low-water mark. The low-water mark indicated to me was a spark driven into the pier, which was two (2) feet below the surface of the water.

Ques. Do you, of your own knowledge, know anything about a bar out in the river opposite the delta?

Ans. I do not only from hearsay.

Ques. Do you know anything of the width of the channel opposite the pier, of your own knowledge?

Ans. I do not.

Ques. If there is a sand-bar opposite or nearly opposite the delta, and from 200 to 300 or 400 feet out, from your experience and observation of currents, sand-bars, channels, &c., in the Mississippi and other rivers, what effect, if any, would it have on turning the current of the river towards the upper pier?

Ans. Bars of that kind, indicated in this question, are only formed or are nearly always formed during high stages of the river, when the current naturally seeks the deepest channel; consequently in this
855 shape and direction they follow the course of that current, and except in extreme low water, where the surface *are* exposed or very near the top of the water, they do not affect the general course of the current.

Ques. What makes that delta you have described?

Ans. It is the earth, dirt, sand, and gravel brought down by French Creek.

Ques. Then *is* not the larges' amounts of the above materials likely to be thrown out with the spring freshets, when the snow melts or early rains make a high stage of water in the creek?

Ans. Not always. In this county my observation has ledd me *me* to believe that the creeks along the Miss. River bring down more material from the effects of heavy storms in the summer, when the earth is parched and dry, and the rain falls rapidly, not having time to be absorbed in the ground; then occurs the most disastrous floods in our creeks.

Ques. When the water at Fort Madison falls to an ordinary or
856 low stage, so that the volume of the river flows within the navigable channel, with the current sweeping into the bend above the delta, would it have any effect to shorten or cut off the point of the delta?

Ans. Undoubtedly it would to a certain extent, but the delta of French Creek is composed to a large extent of heavy gravel in itself, and is protected by the heavy rip-rap embankment of this C. B. & D. railroad above the delta, which directs the direction and arrests the force of the current.

Ques. Have you made any measurement or survey of the delta since the steamboats began to run in the season of 1872?

Ans. I have not.

Ques. Did you make any survey of it in the season of 1871?

Ans. No.

Ques. Will you state again why you marked the broken line, the shore-line of channel?

Ans. To indicate the inside edge of the channel or navigable part of the stream.

857 Ques. Who, if any one, suggested to you to draw that line, marked shore-side of the channel, close by the point of the delta running outside of the upper pier.

Ans. I drew that line myself, without any suggestion from any per-

son or persons whomsoever, knowing from my experience of bottoms of rivers that navigation must be done in deep water, and deeper than we found it at the pier, and, also, for the general tend of the current at the place indicated?

Ques. Do you know about what depth of water is required on which to navigate the steamboat Phil Sheridan?

Ans. I do not; don't know her dratt at all.

Ques. Suppose the Phil Sheridan to be drawing about five feet, was the depth of water, at the time you made the survey, sufficient for her to have passed over the place where the upper pier stood if it had been entirely removed.

Ans. There was.

858 Ques. If there had been six feet of water over the delta at the time of the accident, in which is this trial, and the Sheridan had been drawing but about five feet, could she not have passed over the delta?

Ans. Certainly she could.

Ques. With a depth of six feet of water over the delta, how far out from the shore would the upper pier have stood? Calculate it from your survey-notes and your plat.

Ans. Some little over a hundred feet from the pier to the shore.

Ques. When examining the pier and taking its measurement did you discern any marks on the pier evidently or probably made by the collision of some heavy body—hit the pier.

Ans. I did not; the only marks I discerned were, I supposed were made by the ice, but I don't know exactly what.

Re-direct examination:

Ques. Will you state whether ice, indicated as within the channel, was at the time of survey?

(Objected to as incompetent and immaterial.)

Ans. Cannot say; ice was gorging in every way.

859 Ques. Suppose the channel o' current of the river naturally presses against the F't Madison shore until it strikes the delta or gravel-bank at the mouth of French Creek, what effect would that delta in consequence have, if any, on the current or channel immediately below the delta?

Ans. The first effect is an eddy created behind the delta, caused by the divergence of the current, and the current could not overcome that divergence unless it was very swift, in, I should say, 800 or one thousand feet.

Ques. In view of said delta, where would the current draw immediately in front of the pier—towards the pier or from the pier?

Ans. It would draw outside of the pier at the stage of the water when the survey was taken. I mean it would draw away from the pier.

E. HUDSON WORNALL,
Civil Engineer.

Witness-fee, $3.00.

Subscribed and sworn to before me this 26th day of August, 1872.
J. L. RICE, *Com.*

(Here follows map, marked page 860.)

861 DISTRICT OF IOWA,
State of Iowa, Lee County, ss:

I, J. L. Rice, commissioner appointed by the district court of the United States for the district of Iowa, to take the foregoing depositions, hereby

certify that, on the 21st day of August, 1872, and from that time to Aug. 26, 1872, there came before me at Keokuk, in said county and State, Tho's W. Wright, Milo A. Penden, and E. Hudson Worrall; that they, having been by me duly sworn according to law, I then and there proceeded to take their depositions, when and at that time said depositions were by me reduced to writing in the order in which they stand in the foregoing pages; that said depositions, after having been written down, were by me read over to the said deponents, and were by them severally subscribed and sworn to before me and in my presence on the days and at the place aforesaid. I further certify that there were present at said times J. McCrea, Miller & McCrary, and J. F.
862 Lomax, atty's for def't, and J. Ham. Davidson and Howell & Rice, att'ys for libellant, and that the deposition of each was taken separate and apart from the other.

I further certify that the said depositions were taken at the times and at the place aforesaid by the agreement of the said parties, and were taken in narrative form by the agreement of the said parties, except where either party desired the question written out, and that when either party so desired the questions were written out. In testimony whereof I have hereunto set my hand this 11th day of September, 1872.

J. L. RICE, *Commissioner.*

Commission fees for taking depositions, $14.50.

(Endorsed:) Northwestern Union Packet Company, libelant, vs. Samuel Atlee, respondent. Depositions of Tho's W. Wright, Milo A. Penden, and E. H. Worrall. Filed Sept. 11, 1872. H. H. Love, clerk, by Erie J. Leech, dep. Filed October 10, 1872. George B. Corkhill, clerk.

863 In the district court of the United States for the district of Iowa, at Keokuk. In admiralty.

NORTHWESTERN UNION PACKET COMPANY, libellant,
vs.
SAMUEL ATLEE, RESPONDENT.

It is hereby agreed that the respondent in the above-named suit may take the deposition of D. D. Merriam, at Quincy, Illinois, upon the annexed interrogatories and cross-questions. Said deposition to be read on the trial of said cause on behalf of respondent; and further notice and commission is waived. Sept. 1, 1872.

McCRARY, MILLER & McCRARY, AND
P. F. LOMAX, *Atty's for Respondent.*
HOWELL & RICE,
Att'ys for Libellant.

864 Interrogatories to be propounded to D. D. Merrian on behalf of respondent.

Question 1. State your name, age, place of residence, and your present business.

Question 2. State whether you have ever been a pilot on the Mississippi River; and, if you answer yea, state how long you were such pilot, and in what sort of piloting you were engaged.

Qu. 3. Are you acquainted with the channel of the river in front of Atlee's mill? and if you answer yea, state what is its direction from the outside point of the gravel-bar, at the mouth of French Creek, a short distance above the mill.

Qu. 4. State about how far from the pier in front of Atlee's mill boats and rafts now, or formerly, ran in ascending or descending the river.

Qu. 5. Do you or do you not regard Atlee's pier as an obstruction to the navigation of the river?

McCRARY, MILLER & McCRARY, AND
P. F. LOMAX, *Atty's for respondent.*

865 Cross-interrogatories to be propounded to witness D. D. Merrian.

X-int. 1. Are you a steamboat-pilot? If so, have you a license as steamboat-pilot?

X-int. 2. How recently have you piloted past F't Madison, Iowa?

X-int. 3. How deep is the water where the upper pier stands, at high and at low water, and at an ordinary stage?

X-int. 4. Is there or is there not a sand-bar out in the Miss. River opposite the gravel-bar above the pier, and extending some distance down the river? How far down does it extend?

X-int. 5. Have you ever seen or known of a raft or a boat striking against said pier?

X-int. 6. Do boats ever pass by gravel-bar, down pretty near to the upper pier and make the crossing to the Illinois shore below the lower pier and Park House?

X-int. 7. What is the effect on the navigation of a steamboat of having a barge lashed to one side of the boat?

X-int. 8. What was stage of water in April 23, 1871?

X-int. 9. In whose employ are you now, and in whose employ have you been for the last three or four years?

HOWELL & RICE,
Att'ys for libellant.

866 STATE OF ILLINOIS,
County of Adams, City of Quincy:

OFFICE OF A. W. BLAKESLEY, NOTARY PUBLIC,
SEPT. 3, 1872.

DANIEL D. MERRIAN, being duly sworn to answer interrogatories, deposed as follows:

Question 1st. State your name, age, place of residence, and your present business.

Answer. My name is Daniel D. Merrian; my age, 57 years; residence, Quincy, Ill's; my present business, lumber-dealer.

Question 2. State whether you have ever been a pilot on the Mississippi River, and if you answer yea, state how long you were such pilot, and in what sort of piloting you were engaged?

Answer. I was a pilot on lumber-rafts on the Mississippi River from 1857 to 1860, and piloted one raft in 1865.

Question 3. Are you acquainted with the channel of the river in front of Atlee's mills? and, if you answer yea, state what is the direction from the outside point of the gravel-bar, at the mouth of French Creek, a short distance above the mill?

Answer. I was acquainted with the channel of the river at that point, at the time I was running as pilot, and have been on the river since, and think I know the channel of the river. From the outside of the bar, the channel runs nearly east towards the Illinois shore, about half way across the channel, then runs south.

Question 4. State about how far from the pier in front of Atlee's mill, boats and rafts run or formerly ran in ascending or descending the river.

Answer. The channel, at the time I ran as pilot, was about 300 feet from the pier, but boats and rafts run all the way from 200 to 500 feet from the pier.

Question 5. Do you or do you not regard Atlee's pier as an obstruction to the navigation of the river?

Answer. I consider Atlee's pier no obstruction to the navigation of the *pier*.

868 Cross-interrogatories:

1st int. Are you a steamboat-pilot? If so, have you a license as steamboat-pilot?

Answer. I am not.

2nd int. How recently have you piloted past F't Madison, Iowa?

Answer. In 1865.

3d int. How deep is the water where the upper pier stands at high and at low water, and at an ordinary stage?

Answer. At high water I think about twelve feet; at low water about 2½ to 3 feet; at an ordinary state about 4½ to 5 feet.

4. Int. Is there or is there not a sand-bar out in the Mississippi River, opposite the gravel-bar above the pier, and extending some distance down the river? How far down does it extend?

Answer. There was a sand-bar in the Mississippi above the pier, about one-half mile, and way above the gravel-bar, and on the opposite side next the island shore; did not extend down as far as the pier.

869 5. Int. Have you ever seen or known of a raft or boat striking against said pier?

Answe'. I have no knowledge of a boat or raft striking said pier.

6. Int. Do boats ever pass by gravel-bar down pretty near to the upper pier, and make the crossing to the Illinois shore, between the lower pier and Park House?

Answer. Boats should pass the upper pier at least 250 feet from it, and run out from the gravel-bar towards the Illinois shore?

7. Int. What is the effect on the navigation of a steamboat, of having a barge lashed to one side of the boat?

Answer. It renders the boat more difficult to handle.

8. Int. What was stage of water on April 23, 1871?

Answer. Do not know.

9. Int. In whose employ are you now, and in whose employ have you been for the last three or four years?

Answer. I have been doing business for myself the last twenty years.

DANIEL D. MERRIAN.

Af

870 STATE OF ILLINOIS,

Adams County, City of Quincey, sct:

I hereby certify that the foregoing deposition of Daniel D. Mer pres- was taken before me at my office in Quincy, Illinois, on the 3 d September, 1872, between the hours of eight and ten a. m. of saidie Mis- that he was duly sworn before deposing, and after concluding hisre such mony, subscribed his name to said deposition and made oath to th

therein stated, and further that all interlineations therein were made before signing.

In testimony whereof I hereto set my hand and attach my notarial seal the day and date above written.

[NOTARIAL SEAL.] ASA W. BLAKESLEY,
Not. Pub.

Notary fee: Taking deposition, $1.50; 2 oaths, 20; certificate & seal, 25; postage, 9—$2.40; D. D. Merrian, witness-fee, $1.00. Paid by respondent.

(Endorsed:) Opened and filed Sep. 10, 1872. H. K. Love, cl'k, by Erie J. Leech, dep.

871 And after the trial of said cause, the court, having fully considered the matter, filed an opinion therein of which the following is a true copy.

872 U. S. circuit court.

THE NORTHWESTERN UNION PACKET COMPANY
vs.
SAMUEL ATLEE.

U. S. circuit court, district of Iowa. May term, 1873.

By Hon. Judge DILLON:

1. The district court, as a court of admiralty, has jurisdiction of a cause wherein the libellant seeks to recover damages caused to his vessel by a pier erected by the respondent, without legal authority, within the navigable channel of the Mississippi River.
2. A riparian proprietor on the Mississippi, although he be the owner of a saw-mill thereon, has no right, without legislative authority, to erect a solid pier of masonry within the navigable channel of the river, in order to fasten thereto a boom for the protection of logs; and such a pier comes within the legal notion of a nuisance.
3. The respondent held to be in fault for failing to keep such a pier lighted at night, in consequence of which the libellant's vessel was sunk and her cargo injured.
4. Extent of riparian rights on the Mississippi River considered.

Before Dillon, circuit judge. Admiralty jurisdiction. Riparian rights. Piers in the navigable channel. In admiralty.

This is an appeal by the libellant from the decree of the district court in admiralty, holding that there was mutual fault, and ordering an apportionment of the damages. The packet company above named filed a libel in admiralty in the district court against the respondent Atlee, to recover damages for injuries to the barge Reaney and cargo, by reason of its running against a pier placed in the Mississippi River by the respondent. The accident or collision, as it is termed in the record, happened about 11 o'clock on the night of the 23d day of April, 1871. The steamboat Sheridan, with the barge Reaney in tow lashed to her starboard side, was descending the river from St. Paul to St. Louis, this being her first trip during that season, and struck the upper pier of the respondent. The night was dark, and there was no

light upon the pier at the time. The respondent had for many years been the owner of a tract of land bordering on the Mississippi River, just below the town of Ft. Madison, Iowa. Upon this land and near the bank of the river, he has erected extensive mills for the purpose of sawing logs, mostly pine, which came down in rafts from the pine regions of the Upper Mississippi, into lumber. These rafts or logs coming down during the high water or the rafting season, the respondent has for years been in the practice of mooring in the water opposite his land and near his mill, and in the neighborhood of the piers built by him and presently to be described. These rafts remained in the water until the logs were sawed, and frequently extended further out into the stream than the location of the pier with which the barge collided. As the respondent found his rafts somewhat insecure when fastened in this manner, he built, in the winter of 1870–'71, in the river near his mills, two piers, (one several hundred feet below the other,) to which he attached a boom for the better protection of his lo s. The injury complained of was occasioned by the upper pier. During the summer of 1870 the respondent had placed in the river a pile of rock, covered with water when the river was high, and exposed to view when it was low. The upper pier was constructed by building on this rock-pile a crib which was filled with stone. The pier is 29 feet by 22 feet in size, and is about 25 feet high, above the bed of the river. Whether it is in the channel or not is a disputed question, in relation to which a great mass of testimony was taken. The following facts are not controverted or are clearly established: The upper outside corner of the pier is about 149 feet from the bank of the river, and about 120 feet from the bank at the stage of water which existed at the time of the collision, and at low water about 99 feet from the bank. The water is about 12 feet deep along the outside of the pier at a low stage of the river. At the time of the collision the water was about 20 feet deep at the pier. About 600 or 700 feet above is a bar or delta from a creek, which projects into the river about 300 feet, from which point the bank of the river recedes so that the complainant's land on the bank is about 200 feet in from where a straight line drawn from the point of the delta to the shore below would come.

873 Outside of this pier there is a free passage-way for boats, several hundred feet in width. The pilot of the Sheridan was skilful and competent, and fully acquainted with the river, but he had no knowledge of the existence the pier. He was employed as a pilot during the whole of 1869 on the Upper Mississippi, but not in 1870. The pier was constructed in the winter of 1870–'71, and the Sheridan at the time of the collision was making her first trip for the season. He did not keep the boat to the middle of the channel, but ran or allowed the boat to run where the pier stood. The barge struck the upper outside of the pier, (which projected above the water only a few feet,) and sank almost immediately. After the collision the respondent kept lights burning upon the piers. The water is deep enough even in a low stage to allow steamboats to pass inside the piers erected by the respondent, and the testimony of more than a dozen pilots is to the effect that before the erection of the piers, they had often run their vessels over and about the place where these piers stand.

The district court decided that both parties were in fault, the respondent for failing to keep lights on the pier, and the boat for not keeping more in the middle of the stream, and divided the damages in accordance with the admiralty rule. The total damages reported by the commiss-

sioner were $2,147.86, and from the decree confirming this report the libellants appeal.

Howell & Rice, and J. H. Davidson, for the libellants.

McCrary, Miller & McCrary, for the respondent.

DILLION, *Circuit Judge:*

The respondent, who is an extensive manufacturer of lumber from logs, and the proprietor of land on the Mississippi River, upon which his saw-mills are situated, the better to carry on his business, erected the piers and boom mentioned in the statement of the case. This boom is several hundred feet in length, and is attached by two piers built in the river. The piers are 25 feet in hight above the bed of the river, and a few feet in hight above the surface of the water, and are in size 29 feet by 22 feet. They are from 100 to 150 feet from the bank, the distance depending on the stage of water, and the water, even in a low stage, is 12 feet deep at the piers. Boats of the largest size, and at any stage of water, can pass inside of the piers if the way be not obstructed by logs or artificial erections.

The jurisdiction of the district court, in admiralty, of the case made by the libel, is settled by the Supreme Court of the United States, and need not be further noticed. (23 How., 209.)

The right of the respondent to erect and maintain these piers at the place and under the circumstances stated, presents the main question in the case, and it is a question of great importance. The court may properly take notice that a large portion of all the pine lumber which is supplied from the pine regions of Wisconsin and Minnesota is floated down the Mississippi in log-rafts, which are owned by or sold to owners of mills located upon the banks of the river. It is the almost invariable practice of the mill-owner to moor the logs in the stream in front of or near his mill, and the logs, in general, remain in the stream until they are taken therefrom, one by one, into the mill to be sawed.

The more effectually to secure or protect his logs, the respondent built the piers and boom in question. It is conceded that there is no statute of Congress or of the State authorizing the erection. Its rightfulness depends, therefore, upon the general principles of the law.

The respondent claims the right as riparian proprietor, and it follows of course that if he has the right, every other like proprietor has the same right.

Notwithstanding the able argument contained in the opinion of his honor in the court below, I have not been able to reach the conclusion that the right claimed for the respondent exists; and although on a question of this kind, which he has so thoroughly considered, I may well distrust the correctness of my own views, still it is my duty to decide it according to my own judgment. It is not my purpose to enter upon any extended argument against the right which is set up by respondent, but only to indicate briefly the grounds of my opinion.

874 The paramount right attaching to the Mississippi River is the right to its free and unobstructed navigation. This is a public right. It exists in favor of the whole public, and for all vessels, small as well as large, and for rafts equally with boats. Any erection or obstruction not authorized by competent legislative enactment, which materially interferes with the paramount right of navigation, is unlawful, and comes within the legal notion of a nuisance. The analogy between the river and a highway or street as respects public rights is very close. The river is a highway or water-way for the use of the public just the

same as a street or highway; and individuals, for their *their* own convenience, have no more right, without legislative authority, to obstruct the one than they have to encumber or obstruct the other. Their rights in both cases are confined to a reasonable use of that which is common to all and which may not be exclusively appropriated by any.

Telegraph-poles, or gas-posts, or market-houses in the public streets are or may be convenient and useful not only to individuals but the public, but if put there without legislatve sanction they are in law nuisances. And so with any unauthorized individual appropriation of any part of a street. Much more clearly would the law pronou'ce illegal any exclusive appropriation of a portion of the public way by individuals for their own convenience by erections or acts which would or might endanger the safety of the public.

The same principles apply to the rights of the public in the river. The adjacent owner may make a reasonable use of the river and the banks. He may, doubtless, land his rafts and fasten them to the bank in front of his property. How long he might keep his logs stationary in the water we need not inquire, for the injury to the libellant's vessel was not caused by coming in contact with logs thus moored by the riparian proprietor; but by piers of solid masonry built at a point which the evidence establishes to be within the navigable channel of the river at its lowest stage. No individual can, of his own motion and for his own advantage, abridge or infringe the rights of the public in respect to the navigation of the river. A pier built within the navigable channel, that is, at a point in the river where vessels may go and where they have the right to go, is an unlawful structure in the eye of the law. Indeed, any permanent structure which interferes with, or which may endanger or obstruct navigation, is unlawful and cannot be legalized by any considerations of utility, or otherwise except by direct legislative authority.

Accordingly it has been held that the erection and maintenance without legislative permission of a dam in the Wisconsin River, at a place where it is navigable, in fact is unlawful, whether it does or does not interfere with the navigation of the river. (Wisconsin Imp. Co. vs. Lyons, 30 or 31 Wis.)

It is suggested that there is an analogy between piers like those erected by the respondent, and bridges across navigable streams. But through bridges across such streams may be of great private convenience and public utility, still legislative sanction is necessary to legalize their existence.

Again, it is argued that the right of the respondent to build and maintain the piers in question rests, or may be rested, upon the same grounds upon which the right of the riparian proprietor to erect wharves and landing-places for his own or the public use. Structures of the character just named, connected with the shore, when not erected in violation of legislative regulations, when they do not obstruct the paramount right of navigation, and are not nuisances in fact, have the sanction of long usage in this country, and under the qualifications suggested may be lawfully erected; but the right, it is said, must be understood as terminating at the point of navigability. (Dutton v. Strong, 1 Black, 23, 32; Yates v. Milwaukee, 10 Wall., 497.)

The reason why wharves and landing-places are thus sanctioned is that they are aids to navigation, and necessary for the reasonable enjoyment of the respective rights of the public, and the riparian proprietor. But the right to erect piers in the navigable channel in order to construct a boom for the protection and detention of logs until the ra-

parian proprietor may manufacture them rests upon no such usage; nor can such be justly said to be aids to navigation, which it is to be remembered is the paramount right, not in the least to be infringed without legislative sanction.

875 If the piers in question be considered unlawful, the liability of the defendant is clear. The pilot of the libellant's boat had no knowledge o' the piers, and there was no light upon them to warn him of their existence. In my judgment he is not to be held in fault for not knowing that there was an unlawful obstruction in the *the* river, and standing further out in the stream. Undoubtedly if he had known of the piers, and if they had been lighted so that he could have seen its location it would have been his duty, if practicable, to have kept his boat away from it. In my opinion, the fault lies wholly with the respondent. This is clearly so if the pier on which the boat was injured was not lawfully there. But suppose I am in error in the above view, I still think the fault is with the respondent, because of the failure to have lights upon it. The river was high, it was at a season of the year when usually there were no rafts moored in the stream, and it was not unlikely that boats might run against it. I cannot think the pilot is in fault under the circumstances for not having his farther out in the stream. So that in any view of the case I consider the respondent liable for all the damages.

It is suggested that these views will occasion alarm to mill-owners upon the Mississippi. But I perceive no cause for apprehension.

If it should be deemed of sufficient importance, Congress would doubtless concede all necessary rights and regulate the mode of their enjoyment. This may, perhaps, be also done by the State in the absence of action by Congress. But without such legislative action it is not probable that mill-owners will be disturbed in the exercise of their accustomed privileges so long as they are reasonably enjoyed and do not essentially interfere with or endanger the paramount right of a navigator.

The decree below will be reversed, and a decree entered here for the appellant against the defendant for the $2,147.86 reported by the commissioners.

Reversed.

876 And afterwards, to wit, on the third day of June, the same being of the May term of said court. in the records of the proceedings thereof in said entitled cause appears the following entry, to wit:

THE NORTHWESTERN UNION PACKET COMPANY *vs.* SAMUEL ATLEE. } No. 8. Appeal.

This cause having been heard on the pleadings and proof, and having been argued by the advocates for the respective parties; and due deliberation being had in the premises, the court doth find that the loss and damages sustained by the libellant was incurred by reason of the wrong and fault of the respondent; and thereupon, it is hereby now ordered, sentenced, and decreed by the court, that the respondent pay to the libellant the sum of two thousand one hundred and forty-seven & $\frac{86}{100}$ dollars (with six per cent. interest thereon from 1st day of October, A. 1872,) together with the costs of suit, to be taxed at $.

877 And thereupon the respondent, Samuel Atlee, in open court, prays an appeal from said ruling and decree to the Supreme

Court of the United States, and which appeal is allowed by the court; and the clerk of this court is ordered to send a transcript of the record, proceedings, and evidence in the cause, duly authenticated, to the Supreme Court of the United States. And if respondent files a supersedeas bond, it must be in the penalty of $5,000.00, and delivered in the usual form and according to law.

878 And afterwards, to wit, on the 9th day of June, 1873, said respondent filed his supersedeas bond in said clerk's office, which said supersedeas bond is in words and figures following, to wit:

879 Know all men by these presents that we, Samuel Atlee and John Atlee, of Fort Madison, Iowa, are held and firmly bound unto the Northwestern Union Packet Company in the sum of five thousand dollars, to be paid unto said Northwestern Union Packet Company or assigns; to which payment, well and truly to be made, we bind ourselues, our heirs, executors, and administrators, jointly and severally, firmly by these presents, dated this 5th day of June, A. D. 1873.

Whereas the above-bounden Samuel Atlee has appealed to the Supreme Court of the United States from a decree of the circuit court of the United States for the district of Iowa, bearing date the 3d day of June, 1873, in a cause in which the said Northwestern Union Packet Company was libellant, and the said Samuel Atlee respondent, and in which a decree was rendered in favor of libellant for $2,147.86 damages, and costs:

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute his appeal with effect, and pay any decree or ju'gment, and all such costs and expenses as shall
880 be awarded against him as such appellant therein, then this obligation to be void; otherwise to remain in full force and effect.

S. ATLEE. [SEAL.]
J. C. ATLEE. [SEAL.]

Sealed and delivered in presence of—

STATE OF IOWA, *Lee County, ss:*

I, John Atlee, on my oath lawfully administered, do depose and say I am surety on the foregoing bond; and that I am worth more than $5,000.00 after all my debts are paid, and that I possess and own more than five thousand dollars worth of property, real and personal, in Iowa, liable to execution over and above all debts by me due and owing.

(Signed) J. C. ATLEE.

Subscribed & sworn to before the undersigned, a notary public of Lee County, Iowa, as witness my hand & seal notarial the 4th day of June, 1873.

[SEAL.] ROB'T A. RUSSELL,
Notary Public.

This bond filed. But in case the bond approved by Judge Love
881 is good in law by his approval, then appelle' entitled to recover on only one of the bonds in case the decree is affirmed in the Supreme Court of the U. S.

This appeal-bond is hereby approved in open court this 7th day of June, 1873.

J. M. LOVE, *Judge.*

(Endorsed:) Filed Jun. 9, 1873. George B. Corkhill, clerk.

882 And afterwards, to wit, on the 18th day of June, A. D. 1873, said respondent filed his supersedeas bond in said clerk's office. Which said supersedeas bond is in words and figures following, to wit:

883 Know all men by these presents that we, Samuel Atlee and John Atlee, of Fort Madison. Iowa, are held and firmly bound unto the Northwestern Union Packet Company in the sum of five thousand dollars, to be paid unto said Northwestern Union Packet Company or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, dated this 5th day of June, A. D. 1873.

Whereas the above-bounden Samuel Atlee has appealed to the Supreme Court of the United States from a decree of the circuit court of the United States for the district of Iowa, bearing date the 3rd day of June, 1873, in a cause in which the said Northwestern Union Packet Company was libellant and the said Samuel Atlee respondent, and in which a decree was rendered in favor of libellant for $2,147.86 damages, and costs:

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute his appeal with effect, and pay any decree or judgment, and all such costs and expenses as shall
884 be awarded against him as such appellant therein, then this obligation to be void; otherwise to remain in full force and effect.

S. ATLEE. [SEAL.]
J. C. ATLEE. [SEAL.]

Sealed and delivered in presence of—

This bond & surety is hereby approved.

JNO. F. DILLON,
Circuit Judge.

STATE OF IOWA, *Lee County, ss:*

I, John Atlee, on my oath, lawfully administered, do depose and say I am surety on the foregoing bond; and that I am worth more than $5,000.00 after all my debts are paid, and that I possess and own more than five thousand dollars' worth of property, real and personal, in Iowa, liable to execution over and above all debts by me due and owing.

(Signed) J. C. ATLEE.

Subscribed and sworn to before undersigned, a notary public of Lee County, Iowa, as witness my hand and seal notarial this 4th day of June, 1873.

[SEAL.] ROB'T A. RUSSELL,
Notary Public.

(Endorsed:) Filed Jun. 18, 1873. George B. Corkhill, clerk.

885 Circuit court of the United States, district of Iowa.

I, George B. Corkhill, clerk of said court for said district, do hereby certify that the above and foregoing transcript contains full, true, and complete copies of all pleadings, exhibits, depositions, and documents used in evidence, and record entries and decree in a certain cause heretofore adjudicated in said court, wherein The Northwestern Union Packet

Company was libellant and Samuel Atlee was respondent, as full, true, and complete as the originals now remain on file and of record in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at my office in Des Moines, in said district, this 12th day of August, A. D. 1873.

[SEAL.]

GEORGE B. CORKHILL,
Clerk of U. S. Circuit Court, Dist. of Iowa.

886 UNITED STATES OF AMERICA, *ss :*

To the Northwestern Union Packet Company, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States on the second Monday in October next, pursuant to an appeal from a decree of the circuit court of the United States for the district of Iowa, wherein Samuel Atlee is appellant and you are appelle', to show cause, if any there be, why the said decree should not be corrected, and speedy justice be done to the parties in that behalf.

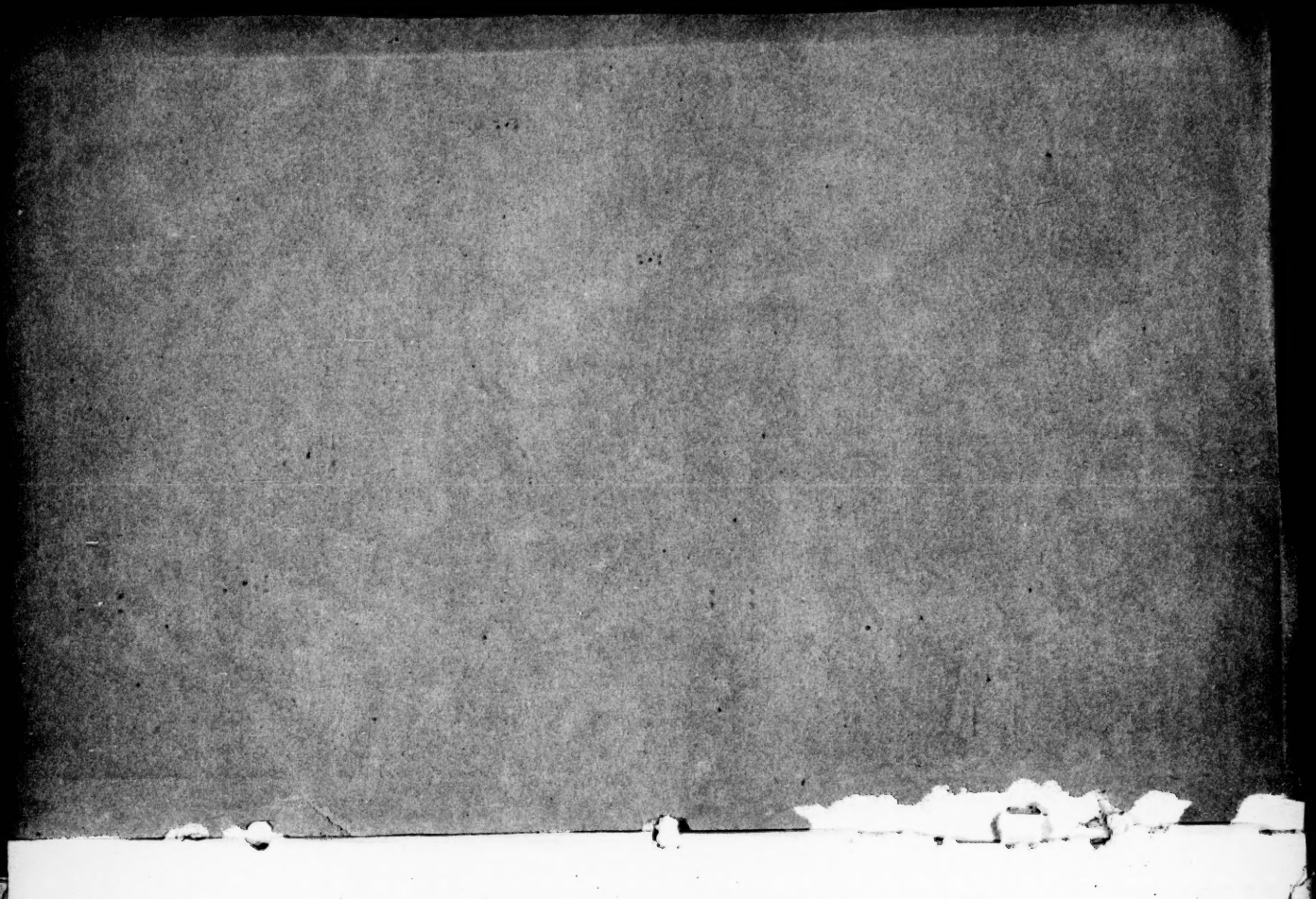
Witness the honorable John F. Dillon, circuit judge of the United States for the district of Iowa, this 5th day of July, in the year of our Lord 1873.

JOHN F. DILLON.

887 We accept service of the within citation this 11th day of July, 1873.

HOWELL & RICE,
Att'ys for Northwestern Union Packet Company, Appellee.

(Indorsement on cover:) No. 600. Samuel Atlee, appellant, vs. The Northwestern Union Packet Company. Iowa C. C. U. S. Filed 21st October, 1873.



In the Supreme Court

Of the United States.

THE NORTH WESTERN UNION PACKET CO.
Appellee.

vs.

SAMUEL ATLEE.
Appellant.

IN ADMIRALTY

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

ABSTRACT OF THE PLEADINGS.

The Libel is in the usual form and charges in substance that Libelant is a corporation, engaged as a common carrier on the Mississippi river and its tributaries. That Defendant is a citizen of Fort Madison, Iowa, engaged in the business of manufacturing lumber, and has been so engaged for several years. That libelant was on the 23d of April, 1871, sole owner of the steamboat "Phil Sheridan" and of the barge "Jack Reaney." That said boats were each of more than twenty tons burthen, and were duly enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between ports and places in different States of the United States upon the Mississippi river. That on the 23d of April, 1871, the said Steamboat and Barge being both in sea-worthy condition, were proceeding on a voyage from St Paul to St. Louis, and that about 11 o'clock P. M.

of said day, while proceeding upon said voyage, when a short distance below the steamboat landing, or wharf, at Fort Madison, Iowa, the said barge being in tow of said steamboat, and said steamboat and barge being in the navigable channel of the Mississippi river, ran against a pier or abutment constructed partly of stone and partly of wood, which pier or abutment crushed into one side of the barge, causing her to sink and become a total wreck in spite of the utmost exertions of the officers and crew of said steamboat.

That said pier or abutment was, without right, placed there by Samuel Atlee, and was claimed, owned and maintained by him at the time of the accident.

That the accident occurred without any negligence, or want of care, or skill, on the part of the pilot, or other officers of said steamboat, and was solely on account of the wrongful act of said Atlee. That the pilot then on duty on said boat had no knowledge of the existence of said pier or abutment. That said pier is located in the Mississippi river, about one hundred and sixty feet from the bluff bank of said river on the Iowa side.

Libellant claims damages in the sum of four thousand, eight hundred and fifty dollars.

By an amended libel, the damage to the barge, occasioned by the collision, was more particularly specified and described, and it is alleged that said barge was loaded with grain consigned to St. Louis, the freight of which, and the boat, amounted to about the sum of eleven hundred and two dollars, which freight belonged to said libelant. That the cargo was so injured as to destroy libelant's right of action for freight thereon, and that in consequence, he lost

$381. That the barge could neither be removed from the place of the accident, in her disabled condition, nor could she be repaired.

THE ANSWER.

The answer sets up as a defence a denial of, or demand for proof of, all the material allegations of the Libel, and in addition, states in substance, the following facts:

Respondent denies at the time of the collision, said Barge and Steamboat were in the navigable channel of the Mississippi river; and on the contrary avers, that the pier in question stands outside of the navigable channel and between said channel and the Iowa shore. He denies that the pier was constructed without right or authority; but admits that he built it and owns it and did own it at the time the accident occurred.

He avers that said pier does in no respect impede or interfere with the usual and common channel of the Mississippi river; that the channel of the river is a considerable distance outside of said pier toward the south or Illinois side of the river; that within about four hundred feet of said pier up the river from it is a sand-bar at the mouth of a creek which extends over three hundred feet into the river and which bar, at a low stage of water, is entirely bare and is several feet above the water; that at an ordinary stage of water, said bar prevents boats descending the river from reaching said pier at all unless they leave the channel and passing around the point of said bar run in on a short turn toward the Iowa shore in the direction of said pier. Respondent shows that he is the owner of the land fronting the river where said pier stands and above and below the same; that he has several large saw

mill establishments standing on said ground contiguous to said pier; that his saw logs are brought down the river a long distance to said mills; that in running said mills he gives employment to a large number of men; that some of the rafts of logs received by respondent are so large that they cannot be safely moored by said mills without the assistance of a boom. That rafting is generally done when the river is at a high stage, and several rafts often arrive at said mills about the same time, and without a boom he could not anchor and safely pocket them against the winds and waves. That to enable him to protect said logs and to carry on his business, in which society at large is deeply interested, he found it necessary to construct a boom to retain logs in front of his mill premises, and that to construct said boom, it was necessary to build said pier, against which the logs or raft could rest, and against which the boom timbers could be placed. That he erected said pier about twenty months ago and has since used it as a protection for his said saw logs. And he claims that he did not wrongfully, but had a right to construct, and has the right to maintain said pier, for the purpose of protecting his lumber, more especially as said pier is not in the channel of the river and is immediately in front of the land of respondent.

He denies that the accident occurred without any want of diligence or skill on the part of the pilot or officers of the Phil Sheridan; and avers, that said accident did occur through the negligence or want of skill and diligence of the pilot, or other officer or officers, in charge of said steamboat. That if it be true, that the pilot of the Phil Sheridan did not know of the existence of said pier, he was not competent to navigate a vessel in that vicinity, as said pier can readily be seen for two or more miles down the river, and for three or more miles up the river;—and was, at the time of said accident, known to all good pilots and river men

on the Mississippi river above the lower rapids. He admits that said pier is located in the Mississippi river, some sixty feet from the bank. But he avers, that said pier is no obstruction to navigation, in the usual and ordinary channel of navigation in said river. Denies that the pier was the cause of the accident and avers that the cause of said accident was the negligence or incompetency of the pilot, or officers of said steamboat.

He avers that the barge might, after the accident, have been raised and repaired for a sum not to exceed seven hundred dollars or thereabouts, and claims, that if the court should pronounce against him, the rule of damages to be allowed should be the sum it would have cost libelant, to have raised said barge and repaired it, to as good a condition as it was before the accident.

In answer to the amended libel, the respondent denies the allegations thereof concerning the nature and extent of the damage done to the barge. Denies that he is liable for the freight which libelant might have earned if he had completed the voyage.

Respondent avers that mill owners along the bank of the upper Mississippi river in the interest of commerce and navigation have been compelled to erect piers for booms for their saw logs as respondent has done, and that large sections of country in Iowa, Illinois and other States are interested in the continuance and prosperity of respondent's mills, and that if said pier shall be destroyed or declared a nuisance, the usefulness of his mills will be seriously impaired as said pier is absolutely necessary to hold and protect his logs and lumber.

ABSTRACT OF EVIDENCE.

Testimony for Libellant.

EDWIN V. HOLCOMB, sworn:

Am 37 years of age, reside in Galena, Ill., am a Steamboat Captain, have been steamboating 21 years on the Mississippi river and its tributaries, navigated steamboats past the town of Ft. Madison, Iowa, during the Seasons of 1867, 68, 69, 70 and 71.

On or about 23d April, 1871, was on board the Steamboat Phil Sheridan, as Captain, when she with the Barge, Jack Reaney, in tow, run against a pier or abutment near Ft. Madison; when we left the wharf at Ft. Madison, I went into the Clerk's Office, and while engaged there, heard the bell ring to stop her engines; I immediately went out to the guards, and as I opened the door the barge in tow, the "Jack Reaney", struck the pier; I only saw what happened after the collision; the Sheridan was going down stream and the said Barge was lashed to her starboard side; as near as I can tell she struck on the forward quarter starboard side and raised up on to and run quartering over the pier. Coming out of the lighted cabin into the darkness, I could not see very distinctly. There are two piers there, and I believe it was the upper one that the Barge ran on to. The side of the Barge was crushed in, and she was sinking so rapidly that we had but a few minutes to do anything. I instructed the pilot to run her into shore so as to let the Barge sink in shoal water. She was so badly crushed that I saw she would sink in a few minutes, and I put the men to carrying off freight; she sank before we could get her to land, and before we had got the freight off of her. I think she sank in five minutes after the collision. She was so badly damaged that she

sank as I stated above, but I could make no examination of her, as she was under water, except a little of her deck.

After getting the freight off she floated with her deck even with the surface of the water,and we shoved her as near as possible to the shore, got a line out from her to the shore and left her. Nothing could be done to prevent her from sinking, because her side and part of her bottom was broken right in, and the collision had knocked her all out of shape. The Barge was in good condition, staunch and sea worthy when she struck the pier. She was a model Barge; I cannot tell her size and tonnage. Her custom house papers will tell. The Phil Sheridan was at time of collision in every respect sound, staunch and sea worthy. Had recently been duly inspected and found to comply with the requirements of law in every respect.

Said Steamboat and Barge were fully manned, officered and equipped, as the law required. I did not see the pier until after she struck. Cephas B. Goll, pilot, was at the wheel. I was Captain on watch, and John Patton, second Mate, was on watch.—Frank Demos was clerk, Fred. Heisel was Watchman on deck. I only know that I heard the bell ring to stop her, and the next moment came the crash of the collision. It was about 11 o'clock at night. I did not see any light, or other signal on or about the pier. Said pier is located about one mile from the Ft. Madison landing, and from forty to fifty yards out from the bank at that stage of water. There are two piers there; they are of stone, cribbed with lumber; don't know their size; I think they are about one hundred and fifty yards apart. I never measured, and don't know the depth of water between the pier and Iowa shore, but I have no doubt there was water enough for a large boat to have gone down inside of that pier. The channel ran right along by those piers. They stood in the right hand edge of the channel go-

ing down stream. The place where the Sheridan was running when collision took place, is the customary channel, and boats always ran there.

I think boats could run between said pier and the Iowa shore, but don't think it was customary. The pilot did not know that the piers were there, and as there were no lights on said piers, hence the collision occurred. I don't think if the pier was lighted up it would affect navigation, but without a light it was dangerous. It is more dangerous while there is no light on them, in the night time. The said boat was en route from St. Paul to St. Louis, when the collision occurred. It was her first trip that season.

CROSS EXAMINATION.

I am not a pilot in that part of the river, but am from Dubuque to St. Paul, and have been for 21 years. I don't know, but think the pier is 150 feet from the Iowa bank in front of Atlee's Mill; I think there is a little water between said pier and the Iowa shore when the river is at its lowest stage, but when the accident happened it was a very high stage of water. It was the barge struck the pier, and not the Sheridan. I never saw the barge and examined her damages after the accident. I saw the barge sink, and was on it after it sunk; worked at it the balance of that night, that is how I know what became of it. I had been there up and down the river for five years. I never noticed the pier on which the barge struck before the collision took place, that I know of. I don't know how high the pier stood out of the water at the time of the collision, nor how large it was in length and breadth. I think I have seen logs lying in the bend above that pier when I was navigating the river before the barge struck the pier. There is not a large sandbar a few yards above the pier, extending from the Iowa shore two or three hundred feet further

than the pier, which sandbar at low stage of water is bare. It is a little gravel point visible at low water, but at the lowest water it does not extend out as far as the pier. I think at that stage of the river it must have been 5 or 6 feet under water at least. It would not be necessary in a low stage of water for a vessel to run on two or three hundred feet towards the Iowa Shore around the point of the sandbar, before it could reach the pier. My experience is that the channel was right by the edge of that pier. Don't know how many piers in connection with saw mills there are on the upper Mississippi; remember one at Alma, and there are some others, but I don't recall any that are so near the channel, and so much in the way as those are. The pier can be seen in day time some distance, further in low than in high water, but can't be seen at night very far without a light on it, and there were no lights there that night.

FREDERICK HEISEL, sworn:

Am thirty years old; reside in Hamilton, Ohio. Am a steamboatman. Have been steamboating on Mississippi river and tributaries. Navigated past town of Fort Madison in 1869, '70 and '71. On 23d of April, 1871, was watchman on steamboat Phil Sheridan; when accident occurred, was on box of said steamboat. Saw all that happened. Steamboat was going down stream, barge was on starboard side; struck on fore quarter or a little forward of midships. It was in the night and dark. Could not see, and am not positive, whether it was the upper or lower pier. There are two piers there. There was no light on either. Saw none except at the mill on the bank; so I saw nothing. The crash was the first I knew of it; it seemed like every thing was wrecked; I started to run over on the barge, and found the sacks that were piled upon her deck tumbling over on the guard of the boat.

In a few minutes the barge sunk. The boat had worked in near the shore before the barge sunk; all the freight that could be got at was carried off on the Sheridan and then the barge was tied to the shore. It took till daylight the next morning to get through. From the crash it seemed like her whole side washed in. Next morning we felt around with a pole to find some lead that was part of the freight, and I put a pole down through the top of the deck, and it went clear through to the ground, showing that her bottom was broken away at that point; she was under water so I could not see her injuries; the barge sunk after she struck the pier; she was crushed in so that she could not be kept afloat; she was sound and in good condition when she struck the pier; don't know her size and tonnage, except that she was a model barge. The Phil Sheridan was in good condition at the time of the collision; said boat and barge were fully manned and equipped. I did not see the pier before the barge struck. The following officers were on watch at the time: E. V. Holcomb, Captain, Cephas B. Goll, Pilot, the second mate, John Patten, Frank Demas, Clerk, and myself. Just a moment before she struck I heard the bell ring to stop: it was about 10 or 11 o'clock, P. M.; there was no light on or about the pier; said pier is about a mile below the landing at Ft. Madison, and I should think 40 or 50 yards out from the bank; there are two piers near Ft. Madison, they are composed of wood and stone; don't know the size; think they are 400 or 500 feet apart; the pier struck was somewhat above water; don't know how many feet; it could not be seen far, because there was no light on it; don't know how deep the water around said pier was at the time; nor how deep water was between pier and shore; don't know where the channel was, am not a pilot; steamboats did previously run in the same place and channel where the Sheridan and barge were, when the collision took place. I sup-

pose the piers are for the benefit of the mill. I am not a pilot and can not say in what way the piers affect navigation; I suppose the dangers are increased; said boat and barge at time of accident were enroute from St. Paul to St. Louis, and it was their first trip of that season.

CROSS EXAMINATION.

I suppose the pier is 40 or 50 yards in front of Atlee's mill from the Iowa bank. It was the barge that struck the pier and not the Sheridan; I saw the barge sink and was on her after she sunk. I had been on the river passing by that pier before said barge struck it, two seasons; I have seen the pier, or one of them before when passing on the river; I did not see lumber lying next below said pier, before the accident happened, but have since; at that time the water was high enough to go any where between banks; I have never seen rafts of lumber there that extended beyond the pier; there are some piers along the river, but I can not name their location or number and they always had lights on them at night. The pier where the barge struck can be seen some distance in day time but not at night.

CEPHAS B. GOLL, sworn:

Am fifty years of age; am a pilot; reside in St. Louis, Mo., have been pilot for thirty-four years; have piloted from 1837 to 1861, except about two years, on the Upper Mississippi past Fort Madison. From 1861 to '69 piloted on Southern waters, except a few trips past Fort Madison, probably three or four. In 1869 was on the Tom Jasper which ran from St. Louis to St. Paul. From this time, until the collision of the Sheridan, I passed Fort Madison twice; was asleep both times. At time of accident was on board Phil Sheridan: was pilot at the wheel; saw all that hap-

pened. The Sheridan was going down stream; the barge was lashed to starboard side of boat; the starboard bow of barge first struck the pier; the upper pier was struck; there are two piers there; after the barge struck she ran on to the pier until barge was amidship; it then slid off the pier and we backed stern of boat up stream in to bank, just below the lower pier; barge sank in three or four minutes; when about the length of the boat above the upper pier, saw something dark in channel in front of boat, and supposed it to be drift; rang bell to stop and then back the boat, but before she could be backed the barge struck. Did not examine the barge after it sank, but should judge that the entire bottom and sides of barge as far aft as amidships were torn out; after we had gotten all the freight we could off, we shoved her close to the shore and fastened her; nothing was done to keep her from sinking, because nothing could be done; barge was in good condition when she struck; she was a model barge; should judge she would carry 200 or 250 tons; as far as I know Phil Sheridan was in good condition at the time; steamer and barge were properly manned and well equipped; I saw pier about one minute before barge struck; barge was about two boat lengths from pier when I saw it; do not know what officers were on watch at the time; two bells were rung; one to stop the boat and one to reverse engines and back her; both bells were obeyed, but time too short; it was about 11 o'clock at night. There was no light or any signal on the pier or about it; should judge the pier to be about one mile below landing at Ft. Madison, and from 75 to 100 feet from Iowa side; I know of but two piers; they are built of rocks about 15 feet wide, and something longer, and about 150 yards apart; top of pier about three feet above the water, and visible that night about two boat lengths off; the water around pier was about seven feet deep; a good stage of water reaches up to the bank; the chan-

nel was directly past the piers; they are properly in the channel; have frequently run where they stand in low stages of water; where the barge sunk was and had been the regular channel; in ordinary stage of water boats can be run within thirty five feet of the Iowa side, until you reach the gravelly point above; have frequently run within thirty feet of Iowa shore there in low water; piers constitute obstructions to navigation; unless lighted they would dangerously affect navigation; the piers are in the channel and there is danger even when lighted; channel is narrow in low water, and a boat sheering off from bar on the other side, can have scarcely room to avoid them; the Sheridan and barge were going from St. Paul to St. Louis; it was the first trip that season; have been licensed since law requiring pilots to license; I think 1852; have been engaged in piloting past Ft. Madison since 1837; I did not know of the existence of the pier at time of collision; they had been built since I last passed Ft. Madison; when I saw the pier I rang one bell to stop boat and one to back her; nothing more could have been done.

CROSS EXAMINATION.

I am and have been a pilot since 1837; the pier is about 100 feet from Iowa shore; there is water between said pier and the Iowa shore when the river is at its lowest stage; there was no boom there at the time that I knew of; the barge struck the pier; was present and saw the barge sink; judged of size and tonnage of barge from her appearance; I only passed the place and after the pier was built; was not on watch then and did not see them; I did not see the pier when passing before collision took place; should judge pier to have stood about three feet out of water, about twenty feet in length and fifteen feet in width; never measured it; there were at times strings of lumber in neighborhood

of pier, but there were always lights on them; there is a bar or gravelly point a short distance above the pier, but it does not, I think, extend out any farther than the pier; in a low stage of water a vessel would not have to run in two or three hundred feet towards Iowa shore from around point of said sandbar to reach the pier; pier stands in the edge of channel; have passed frequently between where pier now stands and Iowa shore, but don't remember when or with what boat; there are two piers at Burlington for same purpose, but are not in way of navigation; there are three at Muscatine for same purpose; they are not in channel and are no obstruction to navigation; there is one below point at Rock Island; it stands close to the channel; boats run close to it for same purpose as at Atlee's; there is one at Winona; it stands close to channel, but not in it; there is one at Alma for same purpose, near shore, some distance from channel. These are all; in day time should think that pier could be seen a short or great distance according as it was high or low water; in the night it would be visible but a very short distance if an ordinary night, and there were no lights on the pier, as there were not on night of collision.

WILLIAM J. GARSEICH, sworn, and states:

I am 28 years of age, reside in St. Louis, am a steamboat pilot from St. Louis to St. Paul; have been so engaged for ten years, and have during all that time held a pilot's license; have been piloting steamboats above St. Louis from 1861 to present time; I have personal knowledge of piers in the Mississippi river just below Ft. Madison, at or near a saw mill; there are two piers; I have often passed them in the night time; never saw a light upon either of them in 1871; I think the lower pier stands out the furthest toward the Illinois shore; I judge the piers are 400 or 500 feet apart; I think the lower one is nearly in a direct line with

the upper, if such line were drawn parallel with the shore: I am pretty sure the lower pier is submerged at high water, and in very high water, both; the lower one was submerged in the spring of 1871. About April 23d, 1871, the water was very high, bank full; I believe the lower pier was then covered; the upper pier is the highest; at the stage of water about April 23d, 1871, said piers could not be seen two hundred feet at 11 o'clock at night, without there was a light on them. I have personal knowledge of the Iowa shore and the channel of the river from the wharf at Ft. Madison down past those piers as same were in 1871. The channel ran very close to those piers; we always had to be very careful to keep from getting into them; we would have to let the boat float; After leaving the wharf we had to stand out towards the Illinois shore to about the middle of the river, and then come back toward the depot above the mills, until we got close to shore; there the channel makes a curve and runs down past the piers, but very near them until we pass the lower one; then go down the middle of the river or make a long crossing towards the Illinois shore; the lower pier is right on the edge of the channel, very near in it; the upper pier stands the same way as the lower one with respect to the channel; I think it is about a mile from the Ft. Madison landing to the lower pier; there is a sand bar above the upper pier formed in such a way as to make it very difficult to run down there with the piers in the way; think it is about three quarters of a mile below wharf, and runs diagonally abreast of the piers; I think the sand bar runs out about 100 yards from the Iowa shore.

I suppose the perpendicular distance between ordinary low and ordinary high water is about 10 or 12 feet; the bank of the river along past that mill is a bluff, and gravelly; from the outside of

the lower pier to the front of the bluff bank, (Iowa side) opposite that pier, is, I judge, from 150 to 180 feet.

There must have been six or eight feet of water between the lower pier, and the bluff bank opposite, about the 23d of April, 1871; at same date the water must have been eight or nine feet deep at the head of, and on the outer side of the lower pier, and about the same at the head of, and on the outer side of the upper pier; there must be four or five feet of water around each of the piers at an ordinary stage of water: a steamboat at low water passing the sand bar (spoken of above) in the ordinary channel of the river, could run down and strike either of the piers, without making any turn in towards the Iowa shore, if she ran away from the bar; steamboats could run over said sand bar at high water; if there was no obstructions between the piers and the bluff bank, steamboats could run there in high water; there are some islands opposite, that is toward the Illinois shore; one nearly opposite said piers; it is not a very large island, and from it to the piers is about three quarters of a mile or possibly more; I believe there is no sand bar between the island and the piers, but what is covered by water, but am not certain. The island and sand bar, (if there is a sand bar,) don't have any effect upon the channel of the river, for we don't have to go near the island. The lower pier makes it more dangerous to run; any obstruction is dangerous. The upper pier is an obstruction and increases the dangers of navigation.—Boats might be blown on to it or get on it if they become unmanageable, or run on to it in the dark if it was not lighted. The perils of navigation are increased by the erection of said piers.—I passed by the piers on the steamer North Western, the night of the accident, and saw no lights. After the accident they put lights on them.

CROSS EXAMINATION.

I have, as pilot at the wheel, navigated a vessel past Ft. Madison a great number of times in the last two years. Have within that time navigated seven different steamboats; I have known the piers since they were built; they are conspicuous for a long distance above the mill in the day time, but not so far from below; piers are about 150 to 180 feet from the shore; there is a sand bar above the piers which in ordinary stages of water reaches beyond the piers; the channel runs down past the piers, and then bears off towards the Illinois shore. Boats never pass between the pier and the mill in an ordinary stage of water. I never saw a boat pass between the pier and the mill; the channel passes right down past them (the piers); they stand in the edge of the channel; the lower pier was, I think, submerged in 1871; I don't say positively that either was submerged April 23d, 1871; at that stage of the water a boat could be where the piers were without any accident; there was plenty of water then to run anywhere; I have piloted boats past said pier a great many times, but never struck it; the channel has changed some owing to the sand bar, it has made closer down on to the piers: a boat passing down the river at low water could strike either pier, by the boats running away from the larboard side; there are piers in the river at Keokuk, Muscatine, Davenport, Dubuque, and many other places in the river, in connection with mills or log harbors or booms, but none of them are in the way as these are; I have been for the past two years sometimes in the employ of the Northern line, and sometimes in the employ of libellant.

JOHN T. GOLL, sworn:

My age is 36, residence St. Louis, occupation steamboat Pilot: have been a pilot 22 years, principally on the Mississippi river,

and am licensed. From '49 to '64 was piloting on upper Mississippi; from 1864 to 1868 on lower Miss., since 1868 on upper Miss. above St. Louis. I have a personal knowledge of the piers in question; I have passed them in the night time; never saw a light upon either of them; the lower pier stands furthest out: have never seen them submerged; At high water the lower pier is about twenty inches or two feet out of water. I think the upper pier is the highest; if there was wind enough to ruffle the water the pier could be seen at night in April, 1871, with no moon, but if not, the shade from the shore and bluff would hide it and it could not be seen; I have personal knowledge of the shore and channel; the channel left the Fort Madison landing and came close down the Iowa shore past the bar at the mouth of the creek and close past the piers, until it passed the lower pier some 500 yards, and then crossed over to the Illinois shore. The lower pier stands in the western side of the channel, and so does the upper one, the latter a little further off from where the steamboats come. There is a gravel point at mouth of creek above the piers; steamboats can land at that point in low water; it was about four feet above low water mark the last time I saw it; the rise and fall of the river is between twelve and thirteen feet; the bank of the river at the saw mill is rocky and gravelly with a bluff bank below it. It is, I should think, about one hundred and fifty feet from the outside of the lower pier to the bluff bank. About 23d April, 1871, I think the water between pier and bank was about five and a half to six feet deep; it was about twelve feet deep, I should judge, at that time at the head of and on the outer side of the lower pier, and about thirteen feet deep at the head of and on the outside of the upper pier. I have navigated steamboats over the spot where both of said piers stand. A steamboat at low water passing the sand bar in the ordinary channel of the river could not

run down and strike either the upper or the lower pier, without making any turn in towards the Iowa shore; she would have to make a turn round the shore or gravel bar in order to miss the outside bar; boats could I think run over the gravel bar at high water, and also between the lower pier and the bluff bank, but this would be some trouble. There are islands in the river near said point near Illinois shore about a half mile from the mill; there is a sand bar between the island and the pier, which throws the channel of the river close to the Iowa shore and piers; I cannot say as to the extent of it; said sand bar has a tendency to throw a boat in close to Iowa shore. The lower pier is in the way of the navigation of the river, and is the same damage to navigation as any other obstruction having no light upon it. I do not think the upper pier affects the navigation coming down stream; going up, it is in the way. The perils of navigation are increased by the erection of said piers.

CROSS EXAMINATION.

Can't tell how many times I have run a vessel past Ft. Madison in past two years; have been past frequently; I have been navigating between St. Louis and St. Paul; have been on "Tom Jasper," "Phil Sheridan," "Alex Mitchell," and others, as pilot; I have known piers since they were placed there; they are conspicuous in day time, bnt not at night; they are about one hundred and fifty feet from Iowa bank; there is a sand bar above the piers extending from the Iowa side beyond the piers; the channel runs down past the lower pier one hundred yards or more, and then crosses over to the island on the Illinois shore; in ordinary stage of water boats never pass between the piers and the mill. Never saw boats go between piers and mill. The channel of the river passes very close to the piers. You have to run the piers very

close coming down stream. The sand bar extends beyond the piers above them. The lower pier might have been submerged in 1871. The boat might become unmanageable and coming into contact with shoal water on the outside, and run off towards the pier. Can not tell how often I have passed the pier, but quite often. Never struck the pier. The channel has changed at that point. It changes every time the river rises or falls, more or less. A boat passing down the river could strike either pier. A boat in the channel at the time of collision could strike both of the piers. The danger of navigation is increased by them. The piers at Keokuk, Muscatine, Davenport, Dubuque, and many other places, are used in connection with mills and log booms. Only the one at Winona is in the way that I know of, and that has been lighted since it was erected. It is customary to secure booms or log harbors. Have been in the employ of "Northern Line" in the Northwestern Union Packet Company, and other parties.—Have had no conversation with any one as to my testimony.

JOHN A. PATTEN, sworn:

My name is John A. Patten, reside at Apple River, Illinois, occupation mating; have been ten years mate on Mississippi river; have been engaged in steamboating for past sixteen years, and during the past four seasons have been engaged in navigating boats past town of Fort Madison, Iowa; was on steamer Phil Sheridan on guard, on starboard side, when the barge ran against pier near Fort Madison; was transferring freight from steamer to barge; saw what happened—the Sheridan was going down the river, barge was lashed to starboard side of steamer, did not know until we struck that there were any piers there. I saw the pier when we were about twenty feet from it. In the morning I saw two piers above us; cannot say which pier we struck. The barge was

struck about amidship on side. The steamer was shoving off from pier when I first saw it. When barge struck, the watchman and myself jumped on board the barge and saw that she was sinking; commenced getting freight off the barge as fast as possible; before we could get much freight off we had to cut her loose from steamer, as she was sinking so fast. Barge was about two hundred feet below the pier when we got the lines off from her—was almost at the bottom when we got lines off. She sank in six feet of water. Think the barge sank within three minutes after she struck the pier. As soon as the barge was cut off, steamer headed up stream, by the side of it, and we got off all the freight we could. About forty feet of the side of the barge was stove in, and the entire barge was knocked out of shape. We left the barge there after getting what freight we could, and making her fast. She sunk so quick we could not do anything. Barge was in splendid order at the time. One of the nicest barges ever loaded. Barge would carry about eight thousand bushels of bulk wheat. The Sheridan was in good order. She was fully manned and equipped. Had one of the best captains on the river, and also pilot. Don't think I saw the pier a minute before barge struck. She struck almost immediately. Barge was about twenty feet off when I saw the pier. Capt. E. V. Holcomb, Pilot Capt. Seph Goll and I were on watch. Dont know what engineer was on watch. The collision was about 9 o'clock at night. There was no light or signal on the pier at the time. The said piers are about three quarters of a mile below steamboat landing at Ft. Madison. Think piers are one hundred and fifty to two hundred feet from Iowa bank. Think pier was about twelve feet long. I only looked at it as we passed. I suppose top of pier was about eight feet above the water. The water around the pier was the old steamboat channel. The channel was right where we ran. The pier was located in the channel.

Steamboats previously ran in the same place where collision took place. Before the piers were built boats ran down that shore in high water; they could run between that pier and Iowa shore, if there were no rafts there; the piers are an obstruction to navigation of the river. They are in the channel in the way of boats.—They make the danger of navigating greater. Sheridan and barge were going from St. Paul to St. Louis. It was first trip of the season of said boat.

CROSS EXAMINATION.

I saw collision happen. Capt. Goll was at the wheel. The pier could be seen from about a mile below, and possibly two miles above, in day light. Don't think pier could be seen several miles in day light. I never saw that sand bar. We always ran down before where piers are. Atlee's logs or rafts did not extend farther into the river than the piers, to my knowledge. Don't know any other pier like Atlee's. Don't know of any built out like his.

FRANK DEMERS, sworn:

Am 31 years of age, reside in St. Louis. Am a steamboatman. Have been engaged in that business six years. Have been engaged in steamboating past Ft. Madison one year as clerk on libellants steamers. On the 21st of April, 1871, I was clerk on steamer Phil Sheridan when the accident at the pier took place. I heard the barge strike the pier. We were going down stream. Said barge was in tow on starboard side. The barge must have struck with her bow. There are two piers. The barge struck the upper one. Immediately after the collision the second mate and deck hands commenced taking freight off of barge. Do not think they had taken more than one sack a piece off the barge before they were ordered to jump on the boat in order to save themselves, as

barge was rapidly sinking. We thought the barge a total wreck, and that the whole bottom was torn off. Would not have given $200 for the barge. Suppose it was worth $5,000 before the accident. The barge was left tied to Iowa shore, after taking off all the freight we could get off. Nothing could be done to prevent the sinking of the barge. Barge was in good condition at time of said collision, and so was the Phil Sheridan; and both were well officered and equipped. I did not see the pier before the barge struck it. Officers on watch at time of collision were Captain Holcomb, second mate, John Patten, pilot, C. B. Goll, watchman, Fred. Heisel, one engineer and one striker, and myself first clerk. It was between nine and ten o'clock when we struck the pier. I should judge that the pier was about three hundred feet from Iowa shore. The stage of the water was low, as we had to use barges as lighters over rapids at the time of the collision. The stage of water the first part of December, 1871, was very low and frozen over. Should judge the pier was three feet above water at time of the collision, and could not have been seen more than four hundred feet, after knowing what it was and where to look for it, on the night of the collision. There was plenty of water around the pier for the Phil Sheridan, drawing four feet. The channel of the river was close to the pier, on the 23d April, 1871. There was plenty of water inside of pier for loaded steamboats to run.—Steamboats could have run where the piers stood, if they had not been there. I suppose the piers were put there to hold boom for logs. The piers constitute obstruction to boats by being placed out in the river in water navigable for steamboats in an ordinary stage of water. There is constant danger of steamboats running against said piers. They are dangerous to navigation even in day time, in high wind.

CROSS EXAMINATION.

I never knew there were piers there until the accident occurred. I think the piers in question stand in the best water. The barge struck the upper pier. Steamboats can run between the piers and the Iowa shore, by keeping close to piers in an ordinary good stage of water.

THOMAS DOUGLAS sworn :

My age is fifty one years; reside in St. Louis; occupation lumberman; have been engaged in this business since 1840; have been passing Ft. Madison every year since 1843; the piers of Atlee's mill stand at the point below the mouth of the creek; one is a little above the mill, and the other a little below or nearly opposite the upper mill; have known the natural current there since 1843; it flows close to the point above piers, and alongside of the piers obstruct it to some extent; the natural current runs from the point above almost parallel with the two piers, and after passing the lower pier, strikes to the east to the island on the east side of the channel; the last time I passed was between 10th and 16th of September, 1871, on a raft; I then said to pilot, "had you not better have your men hold up under the bar as close as you can, on account of the water drawing in against the piers and may, if you get in too close, get your raft broken upon the piers." He said, "I know it, but cannot on account of the bar;" on my suggestion he commenced pulling his men, and we barely missed the upper pier, and struck the boom between the two piers, and tore a number of logs loose; the pier stands in edge of channel and partly in channel, in low water; they are obstructions to navigation; in case mentioned could not keep my raft off them, as the current set strongly against them; piers constitute a nuisance.

CROSS EXAMINATION.

I lived in Wisconsin from 1840 to 1865; never ran on steamboats; am a lumberman; can see piers for a mile in day time; at night scarcely any distance; never saw lights on the piers; piers from one hundred to two hundred feet from Iowa side, I should judge; never measured it; there is a sand bar above the upper pier, and continues along and below the pier a little; both piers are in channel, the upper farthest in; they are eight to twelve feet above water in low water; there is a bar commencing at or about the depot, and running down past the mouth of the creek to the gravel point below the creek, and which is several feet above water in low stage of the river, and runs several hundred feet from the Iowa side into the river; have seen mouth of creek and sand bar many times.

ORLANDO L. WEST, sworn:

Am forty years old; residence Dubuque, Iowa; occupation a river pilot between St. Louis and St. Paul. Have been a pilot on the Mississippi about twenty years. Hold a license; have held it since 1852. I have piloted steamboats past Ft. Madison all the last season, and probably ten or twelve previous to that; have personal knowledge of the piers; there are two I believe, they stand either in or right close to the channel, in as good water as there is there; they stand right where we would run if they were not there; never saw a light on either of said piers; there was no light on them on the evening of April 23d, 1871, when I passed them. The water was pretty well up at the time of the accident; not the highest, but a big stage. The piers could not be seen at all until you got right on them, close to them. They stand in the shade of the bluff, mills, lumber &c. The channel ran from the wharf at Ft. Madison close to Iowa shore around the bend in low

water. In high water, as it was then, we had more room. From the gravel point in the bend, just above the upper pier, we had to turn to the right, as close to the piers as possible. We had to pass close by and above both piers, and from the same we went straight down the middle of the river. I think the upper pier stands in as deep water as there is there. I think that pier takes just about one third of the room we have from the left hand bank, the Iowa shore. There is a sand bar between two hundred and three hundred feet above the upper pier. It is a small bar standing out about one hundred and fifty feet, perhaps more. It is bare at a four feet stage of water. Boats run close up to it. It is a bluff bar. It is deep water along side the upper pier, either in low or high water. I believe there is plenty of water there at all times. Prior to the erection of said piers boats ran where they now stand. They constitute an obstruction, and increase considerably the perils of navigation.

DAVID LECLAIRE, sworn:

Am fifty years old; reside in Davenport, Iowa; am a pilot, and have been ever since 1837 on the Mississippi from St. Louis to St. Paul; have held a license since 1852. Have piloted boats past Ft. Madison every season since I have been a pilot. Have personal knowledge of the piers at Atlee's mill. They stand in or near the channel at the present time. I have seen the channel right where they are, years back. Have passed the piers prior to the accident and never saw a light on either of them. There was a pretty good stage of water April 23, 1871. The pier could not be seen by the pilot of a descending boat at night a hundred yards. The channel in April, 1871, ran down the bend close to the Iowa shore from the Ft. Madison wharf to the gravel point, and then continued to the right along the piers, close to them; from the low-

er pier it went straight down the river. The upper pier stands in the channel. The gravel point is from one hundred to three hundred feet long in low water along the shore, about three hundred or four hundred feet above the pier; steamboats can run close to it, as close as they can without hitting it. There is plenty of water around the upper pier at any stage of water. Prior to the erection of said piers steamboats ran where they now stand. I have run there myself. The piers are a nuisance and obstruction, and increase the perils of navigation.

ALBERT WEMPNER, sworn:

My age is thirty eight years; residence Hamilton, Illinois; occupation steamboat pilot for about twenty years, on the upper Mississippi. I have been licensed since 1852. Have piloted steamboats past Ft. Madison every season since 1852. I have a personal knowledge of the piers at Atlee's mills, Ft. Madison. They are in the channel I think, as the channel reaches the shore at that point. I have passed there in the night, prior to April 23d, 1871, and there were no lights on the piers. There was, April 23d, 1871, a good stage of water. The channel then followed the land close to Iowa shore, with the exception of a little stand out, at the mouth of a little creek above the piers. It runs past the piers, we aim to run outside of the piers and by the piers. The upper pier stands to the right of the center of the channel going down stream. There is a little bar at the mouth of the creek above the piers, about five hundred or six hundred feet above the upper pier. Its extent varies with the stage of water. It is bare in very low water. Boats can land against it, and at high water run over it. The water is always deep enough for steamboats along side the upper pier. Prior to the erection of said piers

steamboats ran just where they do now. The piers are an obstruction and increase perils of navigation.

CLEOPHAS BAIRD, sworn:

My age is 31 years, residence Louisiana, Mo., occupation since 1861, a pilot on upper Mississippi. Have held a license since 1869. Have piloted steamboats past Fort Madison during the seasons of 1869, '70, '71. I have a personal knowledge of the piers at Atlee's mills. There are two; they are right at the edge of the channel; a man can land a steamboat against either pier at any time. Never saw a light on either pier prior to April 23, 1871. At that date there was a big stage of water. In my opinion, at that stage of water, the upper pier could not be seen at all. The channel runs right around the land, close to the Iowa shore, past and close to the piers. The upper pier stands right at the edge of the channel. There is a gravel point about one hundred or one hundred and fifty yards above the upper pier; it extends about fifty yards from the shore. Boats can land against the gravel point, and in high water they can run over it. There is always room at the upper pier for boats to run; I would judge there is eight feet there in low water. These piers are a nuisance; they are an obstruction; they increase perils of navigation.

WILLIAM KELLEY, sworn:

Age 33 years, reside in St Louis, my occupation a pilot; have piloted twelve years on upper Mississippi, and one year on lower Mississippi. Have held a license to pilot for the time just mentioned between St. Paul and St. Louis. Have piloted boats past Ft. Madison every season for twelve years past, except one. Have a personal knowledge of the piers near Ft. Madison. There are two of them; they are just in the edge of the channel. Have

passed the piers at night prior to April 23d, 1871. Am pretty positive that there was no light on either of them; at that time there was a good boating stage, neither high nor low. Don't think the upper pier could be seen the length of a boat at night unless it was a star light night. The channel from the Ft. Madison wharf followed the bend all the way closely past the gravel point, and then past the piers. The upper pier stands at the edge of the channel or close to it. There is a gravel point about one hundred or one hundred and fifty yards from the pier extending out from the shore forty or fifty yards. It is bare at a very low stage of water, and then not so far as forty or fifty yards. Steamboats run close to it at low stage of water; they may run over it if necessary in high water. Along the pier the water is, I suppose, six, seven or eight feet deep at low water, and three or four times that at high water. Before the erection of the piers steamboats ran very close to, if not over those places in high water. These piers constitute an obstruction to navigation. The perils of navigation are increased by the upper pier.

URIAH BROCK, sworn:

Am fifty years of age; reside in Illinois. Have been a pilot on the upper and lower Mississippi, thirty years. Have piloted usually past Fort Madison every season since 1841, except '61, '62, and 63; have personal knowledge of the piers; they are on the Iowa side of the channel; the upper one is a little nearer the shore than the lower, and is set at a sharp point of the shore; the lower is further out in the river than the upper; never saw any light on either before the accident; there was a medium stage of water April 23, 1871; the pier could not be seen of a moonless night nearer than two or three lengths of the boat; the channel follows the land close, and passing the lower pier it makes a stand out about

half way between the Iowa shore and the island. The upper pier stands to the Iowa side of the channel. There is a gravel bar above the piers. Steamboats can run right against it. It extends up a short distance into the bend. It is only bare at very low water. At high water they run over it. Along side the upper pier there is a good depth of water at a low stage. The perils of navigation are increased greatly by said piers.

G. W. DUNCAN, sworn;

Am thirty seven years old; am master of steamboat "G. H. Wilson," and am a licensed pilot. Have been steamboating in all capacities except engineer and cabin work, since spring of 1857.—Have steamboated past Ft. Madison more or less every year since spring of 1857. Have an idea of Atlees' mill, and of the channel there. From the Ft. Madison landing we come down the bend to the piers, leaving them on the starboard. A boat coming down there has more or less flanking away, more especially with barges in tow. We go past the piers till opposite the pork house, and then cross over to the Illinois shore. It is shallow out to the left of the pier, and the effect of this shallowness is to throw the current towards the piers. I think boats can land along side of piers on outside. In the night time piers cannot be far seen from a descending boat, unless a light on them. Upper pier considerably in way of navigation; boats could run where it is, if it were away. It constitutes an obstruction to navigation; it increases peril of navigation. I knew barge Jack Reany; considered she was worth $3,000 to $3,500. Freights plenty when she sank, and barge worth from $20 to $25 per day. I examined the barge while she lay sunk. Took off my clothes and went into the water and examined her; found her broken half way in two; broken in her side from her decks to her knuckle, and from her knuckle to her

main kelson. Her cargo box was badly broken, and her hog chain was off her and lying in the water. Her stern lay in four and a half feet water, and bow on dry ground a number of feet.

CROSS EXAMINATION.

Never saw a boat run over the bar above the pier at low water; but any boat can run over it in high water. Have seen rafts of logs at the mills before piers were put up. There are piers at various places along the Mississippi river in front of saw mills.—Have seen rafts as far out in the river as where the piers are now. "I think it" (the pier) "stands on the edge of the channel on the Iowa side."

JEROME RUBY, sworn:

Am 39 years old, live in Rock Island, Ills., occupation pilot; am a licensed pilot, and have been since 1854 or 1855; am accustomed to pilot steamboats past Fort Madison; am familliar with channel and with piers near Atlee's mill; was on steamer Rock Island on April 23, 1871; it was high water; when leaving Ft. Madison we run out from shore a little way and come close in to the bend again below R. R. depot, then follow the shore and run the bend out, passing between the bar and upper pier; this bar is the one out from the bite of the bend there in middle of the river, extending from Illinois shore to the channel, and extending from opposite the landing to down just belowthe upper pier; it is customary to run the middle of the channel between sand bar and the pier; the effect of sand bar is to cause descending boats to run off from bar and closer to piers; there is a gravel bed above upper pier; on April 23d, 1871 steamers could run over this gravel bar; at that time the gravel bar would not be any obstruction to a large boat running straight down the bend close to the shore, to or against the upper pier;

have run over the ground where pier stands many times at high water stage; have made landings to shore there at point below mill where piers now stand; pier was not there in '70; my first knowledge of the pier was when I saw it from pilot house of steamer Rock Island on the night of first trip down in 1871; we were running down in customary way and when nearly abreast of this pier discovered it and barely missed it; there was no light on it; could have seen it two boat lengths. I understand that the pier stands on the edge of the channel on Iowa side. It increases materially the danger of navigation without a light on it. If a pilot did not know of its existence, he would be likely to strike it. Pier has been lighted since accident. It constitutes an obstruction to navigation. At a certain stage of water we mount reef at point, just above pier, and at night a pilot coming down the river would desire to drop off the reef at that point, and would be in great danger of hitting the pier. Running in low water arriving at the point where the gravel bar is, it would be necessary to hold boat up to reef to overcome the flank movement, and by so doing would be liable to get too close to reef, and would cause boat to run toward pier in spite of the rudder. Lights are invariably kept on rafts moored over night.

CROSS EXAMINATION.

The channel at ordinary stage of water is about three hundred feet wide at upper pier. It is most prudent to keep boat in middle of the current when possible. Pilots always endeavor to do so. If a pilot should be in the centre of channel he would be about 150 feet from pier. Rafts have usually lain where piers are erected. Rafts are about 200 feet long. When we landed at Atlee's mill ran on outside of rafts and came in below them. We went outside of the gravel bar at mouth of creek. If the water

had been high and no raft had been there we could have gone over the gravel bar along the shore. Water now at Fort Madison is two or three feet higher than stage of 1864. I presume gravel bar is out of water now. The water would have to be five feet higher to let the Phil Sheridan pass over gravel point. Channel at mouth of French Creek is two hundred and fifty or three hundred feet wide. On the Illinois side at French Creek is a sand bar; it is two hundred and fifty feet out, may be. I never measured it. In ordinary stage of water the channel would be between the gravel bar at the mouth of French creek on Iowa side and the sand bar towards the Illinois shore. In front of pier to said bar is full 300 feet. When I say channel I mean where boats usually run; it is so usually considered. Channel below Fort Madison has frequently changed in the last seventeen years.

AARON SCOTT, sworn.

I live in Fort Madison, am 38 years old, occupation that of harness maker. Have worked around stationary engines; have worked for Saml. Atlee at mill since 1869. Think I know of location of upper pier. Pier was cribbed in winter of 1870 and 1871. Have seen steamboats run over place where pier now stands. Packets could not land above and landed there. Before upper pier was built Atlee moved his rafts right under the reef of gravelly bar. generally kept lights on them. While putting rock in pier he kept lights on rock pile a portion of the time. Prior to accident he did not keep lights on upper pier. At time of accident there were a few logs inside of pier. Saw the barge there after she sank. On April 23d, 1871, it would be considered high water.—Was on barge while Harrison West was getting lead out of her. The water about upper pier is about six feet at present time.—Have not measured it.

CROSS EXAMINATION.

Atlee kept light on rock pile where pier now stands a part of the time. That rock pile reached about one foot or eighteen inches above water in summer of 1870. The crib was built on that pile of rock. Boats ran generally forty yards outside of the rock pile in 1870; some less. Did not see boats pass rock pile every day, but saw them often. The pile of rock may have been sixteen or twenty feet wide on top. In daylight I suppose you could see it when eighteen inches above water. Boats landed at Atlee's mill four or five years ago, and some last summer. When there were rafts there boats went outside of them. When water was so low they had to run around the bar they had to run around rafts. Saw a portion of that bar this week. Should judge that half of it is out of water. Have seen boats run where piers now stand, but as a general thing it was in high water. At the present time boats run from forty to fifty yards outside of the pier. I only guess at it.

RE-DIRECT EXAMINATION.

When that stone pile was a foot or eighteen inches above water, should suppose it was a low stage of water. Don't know exact stage. Lights were on it at that time.

RE-CROSS EXAMINATION.

I think I saw Atlee drop his boom outside of that pile of rock. I have seen rafts extending further out than that pile of rock, and resting against it.

O. M. RUBY, sworn:

Am thirty six years old, and live in Buffalo, Iowa. Occupation is a steamboat pilot. Have been licensed by Government for

fourteen years. Have run by the town of Ft. Madison for fourteen years. Piloted by there in season of 1871, and part of 1870. Am familiar with channel down past piers at Atlee's mill, and with location of the piers. It was a good stage of water there in April, 1871. After leaving Ft. Madison we run natural course of the bend, keeping from one hundred to one hundred and fifty yards from shore. Going down in night if we should get near the outside bar, boats are liable to run off towards the piers and there is danger of hitting them. Think there is water enough to land along side of piers. Have run steamers over place where pier now stands. Have made landing about abreast of lower pier.—Am familiar with gravel point that makes out from French creek. The water might have been deep enough on or about April 23d, 1871, to permit the Sheridan to run over the gravel point, and strike the upper pier. Had passed that pier in night prior to accident. There was no light on it. It has been lighted since the accident. Should judge the pier stood in edge of channel. Should claim that the pier was an obstruction to navigation before lights were put on it especially. Rafts moored on shore usually have lights on them. Sometimes not. Know Cephas B. Goll, a pilot. His reputation is good where he is posted.

CROSS EXAMINATION.

The gravel bar at the mouth of French Creek is out of water now. Think the water has been a foot lower than it now is.—Would have to run out no farther when going to land than if we were not to land. Should judge we pass about one hundred feet in front of pier in going up and down the river. Atlee has for many years had rafts laying in front and above his mill. Rafts project farther out than the upper pier. Should think the rock pile stuck out of water about three feet. Boats run nearest the

pier in low water. Lived in Ft. Madison seven years; left there three years ago. Have seen boats run near the shore in high water. Have done so myself. Boats usually keep outside of the gravel bar at French Creek when water is high; because boats do not steer very well in shoal water. When the water is four or five feet deep on gravel bar, the usual route is same as when it is dry. If Mr. Goll had piloted on the Mississippi for many years, and had been away a year or two, and had not seen the pier erected in winter of 1870, I should not consider him sufficiently posted to pilot a steamer and barges in neighborhood of gravel bar and pier in night time. The channel has not changed there materially.—The channel is about three hundred feet wide opposite the upper pier. It is the prudent course for a pilot to keep his boat in the middle of the channel. If a boat is kept in the middle opposite the upper pier there may be or may not be a tendency to flankage, toward the upper pier. A boat having a barge in the night, is liable to swing to, and the barge pull her toward Iowa shore.

RE-DIRECT EXAMINATION.

A boat with a barge can not maintain her course as steadily near the middle of the channel, as without one. Boats readily vary from fifty to one hundred feet from center of channel. Opposite the pier there is room to run one hundred yards from mathematical centre. If there had been a signal light on pier, Captain Goll would have been competent to take the Sheridan and barge by in safety. It was more difficult to pass the piers before lights were put on them than now. Think rafts moored at Atlee's mill usually had lights on them.

RE-CROSS EXAMINATION.

There is one pier here, one at Burlington, one or two at Muscatine, one at Lyons, one or two at Clinton, at Winona and one or

two at Alma. Have seen lights on several of them, and on several I have not.

HENRY G. CARSON, sworn :

Am fifty five years of age; live in St. Louis; am pilot on Mississippi river from New Orleans to St. Paul. I have a license.—Have been piloting on said river; have been captain and in other capacities nearly forty years. Am familiar with channel below Fort Madison, and with the piers near Atlee's mill. Have been engaged in piloting by there nearly forty years. I piloted by there in 1869 and in 1871, but not 1870. I have very frequently piloted boats over the very spot where the upper pier now stands, generally at a good stage of water, but I have been over it at a low stage. The channel from Ft. Madison down the Iowa shore but not very close until you get in below the mouth of the creek, then it keeps down by the pier, and then makes a long crossing over towards the Illinois island. The channel runs close to the pier, I mean by the channel, any where it is deep enough for a boat to run in low water. I have seen a great many boats run where pier is; have run there myself. Pier is an obstruction to free navigation, and increases the danger of navigation, because though we may see them, by stress of weather or unmanageableness of the boat, she might be driven against it. It was with the utmost difficulty I could keep the Lake Superior with a barge off those piers, on one trip last year when the wind was blowing a gale. A collision with a pier would be a great deal more perilous than a collision with the shore. There is a gravel bar above the piers; I don't think it gets dry any farther out than what the pier is from the shore. The bar is cut off somewhat abruptly near the edge of the channel. I think it goes off abruptly more from the stoppage of the washing from the creek, than from the current

cutting it off. I think a boat would strike the pier if she run in a straight line with the stream. The bar varies in depth from its edge, from ten to fifteen feet, and gets higher as you get nearer the shore. There was about five feet of water on the rapids in April, 1871, which makes a big stage of water in the river. There was water enough at that stage to enable the steamer Phil Sheridan with a barge in tow on the starboard side, to pass over the bar and descend against the pier. Don't know how much of top of pier was above water at that stage. Pilot of descending boat could not see the pier during hazy nights after moon down, and some nights pier could not be seen ten yards. There is a bar opposite the bite of the bend, and water tends to run off the bar into the channel. It has to, because it has no other place to go to.—The effect of a boat running a bend is to flank into the bend.—Boat invariably wants to run away from bar or shoal water. In this place it would throw her into the bend. Have known Cephas B. Goll for twenty five years. His reputation as a pilot is good. Absence from a portion of the river one season would not effect the competency of a pilot at that particular place, because there has been no particular change in the channel in that place for many years, that would affect it at that stage of water. Pilots are frequently absent a season from portions of river over which they have a license. It is not necessary that pilots should serve as apprentices in order to re-use their license as pilot, after being absent for a season. I was absent from the upper river in 1870. Was employed as pilot after my absence in 1870. Absence from that part of the river where Atlee's pier is built would not affect pilots' eye sight.

CROSS EXAMINATION.

About a third of a century ago boats passed on the east side of the island in front of Atlee's mill, which was the only way they

could get to Ft. Madison, on account of the defective channel on the Iowa side. In late years channel has changed so that we could run on Iowa side. Was not much gravel bar at French creek until the country was pretty well filled up, and timbers and willows &c., were cut from its bank. Atlee has had saw mill there for fifteen years. His rafts and logs generally laid along in front of his mill, sometimes above and sometimes below. I did not pilot in front of Ft. Madison, in 1870. I did in 1871. Just saw the piers in 1871, when going up. Was on watch in daylight. Did not notice how much they stood above water. Cannot say how far they could be seen up and down the river. Could not see them in day time more than two miles. If a pilot had been away from the river a year, and did not know of pile of rock or a pier at Atlee's mill, he would be a safe and competent pilot in a dark night, if there was a natural obstruction; if it were an artificial obstruction a pilot, who had been absent for a whole season would be competent to navigate past Atlee's mill because it would be published to warn pilots, as is customary; have seen papers telling pilots where and when not to run. There is a dangerous pier at Alma; several at Winona with lights on them; some at Clinton; some at Muscatine; some at Burlington; lights are not always kept on them; lights are kept on the one at Winona; never saw a light on the Burlington piers; if a snag had got in the river at Atlee's, that the pilot did not know of, he would have been competent; some portions of the channel change in one season, but not often. Remember when there was no gravel bar at the mouth of French Creek. The tendency of the bar is to increase. The rafts at Atlee's sometimes extended out farther than the pier, but not always. Have run over the place where the pier now stands. Once in the "Lacrosse" in 1858, I think. Have run over the gravel bar and where pier stands since 1858. Run within forty feet of shore in high water. De-

cutting it off. I think a boat would strike the pier if she run in a straight line with the stream. The bar varies in depth from its edge, from ten to fifteen feet, and gets higher as you get nearer the shore. There was about five feet of water on the rapids in April, 1871, which makes a big stage of water in the river. There was water enough at that stage to enable the steamer Phil Sheridan with a barge in tow on the starboard side, to pass over the bar and descend against the pier. Don't know how much of top of pier was above water at that stage. Pilot of descending boat could not see the pier during hazy nights after moon down, and some nights pier could not be seen ten yards. There is a bar opposite the bite of the bend, and water tends to run off the bar into the channel. It has to, because it has no other place to go to.—The effect of a boat running a bend is to flank into the bend.—Boat invariably wants to run away from bar or shoal water. In this place it would throw her into the bend. Have known Cephas B. Goll for twenty five years. His reputation as a pilot is good. Absence from a portion of the river one season would not effect the competency of a pilot at that particular place, because there has been no particular change in the channel in that place for many years, that would affect it at that stage of water. Pilots are frequently absent a season from portions of river over which they have a license. It is not necessary that pilots should serve as apprentices in order to re-use their license as pilot, after being absent for a season. I was absent from the upper river in 1870. Was employed as pilot after my absence in 1870. Absence from that part of the river where Atlee's pier is built would not affect pilots' eye sight.

CROSS EXAMINATION.

About a third of a century ago boats passed on the east side of the island in front of Atlee's mill, which was the only way they

could get to Ft. Madison, on account of the defective channel on the Iowa side. In late years channel has changed so that we could run on Iowa side. Was not much gravel bar at French creek until the country was pretty well filled up, and timbers and willows &c., were cut from its bank. Atlee has had saw mill there for fifteen years. His rafts and logs generally laid along in front of his mill, sometimes above and sometimes below. I did not pilot in front of Ft. Madison, in 1870. I did in 1871. Just saw the piers in 1871, when going up. Was on watch in daylight. Did not notice how much they stood above water. Cannot say how far they could be seen up and down the river. Could not see them in day time more than two miles. If a pilot had been away from the river a year, and did not know of pile of rock or a pier at Atlee's mill, he would be a safe and competent pilot in a dark night, if there was a natural obstruction; if it were an artificial obstruction a pilot, who had been absent for a whole season would be competent to navigate past Atlee's mill because it would be published to warn pilots, as is customary; have seen papers telling pilots where and when not to run. There is a dangerous pier at Alma; several at Winona with lights on them; some at Clinton; some at Muscatine; some at Burlington; lights are not always kept on them; lights are kept on the one at Winona; never saw a light on the Burlington piers; if a snag had got in the river at Atlee's, that the pilot did not know of, he would have been competent; some portions of the channel change in one season, but not often. Remember when there was no gravel bar at the mouth of French Creek. The tendency of the bar is to increase. The rafts at Atlee's sometimes extended out farther than the pier, but not always. Have run over the place where the pier now stands. Once in the "Lacrosse" in 1858, I think. Have run over the gravel bar and where pier stands since 1858. Run within forty feet of shore in high water. De-

scending boats aim to get out from the pier as far as they can, but sometimes come very close to it. When the wind is on shore you almost always get close to it. The channel in front of pier is two hundred to two hundred and fifty feet wide. Boats on upper Mississippi are from thirty to sixty feet wide. A long boat with a tow sticking out for sometimes one hundred feet when the wind is blowing on the Iowa shore strong, has to run at an angle of forty five degrees sometimes, to keep off the piers, and that would bring the bow of barge close out to the bar. The channel in front of gravel bank varies. It changes very much. In 1852 the channel in front of gravel bar was not wide enough for a steamboat and barge to pass unless the barge drew less water than what was in the channel. In spring and summer of 1871, I think it was two hundred feet wide in front of gravel bar. After you pass the gravel bar the channel keeps along the Iowa shore, by the piers until you get to the point. The channel draws in towards the Iowa shore until it gets past the piers. The piers stand in the channel. You can run where the piers are at any stage of water. Could run inside piers at present stage with any boat I could get over the rapids. Descending boats would keep near the piers because it is the deepest and strongest water. There is a great deal of difference with pilots where to run. When I saw the rafts extending out beyond the piers, I did think they were some obstruction, as I think any stationary body in the river an obstruction. I think rafts, piers to hold rafts, or a highway bridge, or a railroad bridge, are all obstructions. Atlee might have put a pier on the rocky point, four hundred yards below the mill, and made a boom to reach above the mill to protect the logs. I think there is no tendency to flank towards the Illinois shore.

JOHN GREGGS, sworn:

I am thirty five years of age. Am a steamboat captain. Have

been steamboating since 1866, and am a licensed pilot. Am somewhat familiar with the channel by the piers below Ft. Madison. In running down stream from Ft. Madison, boats round out from the landing and make a stand out from the landing; within a short distance from the landing they come back to the Iowa shore. Then they follow the bend and after leaving the sand or gravel point, they straighten down the river and cross over to the Illinois shore, just below the piers. The upper pier, I should say, is in a portion of the channel on the Iowa side. The current of the river sets on the Iowa shore towards the pier. Steamboats, in case of high water or wind, are liable to sweep that shore or pier, as a tow boat. On one or two occasions I was in great fear of striking the pier in passing with barges in tow. The wind was blowing and my boat was flanking so it was almost impossible to keep her off. I had the depth of the water around upper, pier sounded last season in September, I think. There was about thirty inches of water on the rapids at that time, and I found by sounding at that time from six to eight feet of water at the pier. I first discovered that pier last season in the latter part of May or first of June. I don't know exactly, but should say the pier was an obstruction in the river. There was danger of boats running into it. In April, 1861, there was high water, but not the highest.

At a high stage of water in the night without a moon, the pilot of a descending boat could not see that upper pier without any light on it, over a hundred yards, if so far as that. Knew barge Reaney; she was a bulk grain barge; such a barge was worth $3000 to $3500. That kind of barge under elevator was worth about $10 per day. Freights were plenty in May and June, from Davenport up. I saw the Jack Reaney after the accident lying near the piers, partly submerged. Saw her twice. The last time

in September I think. She was repaired, but after her repair she had no hog chains or roof.

CROSS EXAMINATION.

I towed the Jack Reaney last season with the "Annie Johnston." Judge libellant owned her at that time, and used her in carrying freight. She was worth $10 per day after she was repaired.

HARRISON WEST, sworn:

Am forty four years old. Live in Montrose, Iowa. Work around the rapids. Am a pilot, but not licensed. Know the barge Jack Reaney. Saw her next morning after the accident.—She was lying at that time pretty nearly straight up and down the river, sunk; the water was running over her deck. She had a line ashore. The stage of water was about medium. The water was three to five inches deep on the top of the boat, in the middle; the ends were both out of water. Libellant wanted me to raise her. Captain Davidson instructed me to examine her and report to him what I would bulk head her for, and raise her, and get her ready to float. This did not include repairs. I made that examination on the fourth day of June. I found the bottom badly broken up, and the side all broken in. The side was cut entirely in two. Also lower knuckle, and about twenty three or twenty four floor timbers were broken. The deck and cargo box were badly damaged. The hog chain was broken. I commenced work on her July 21. We blocked her up and repaired her. I worked by the day. We had to send to La Crosse for long lumber. We put on thirty two feet of new knuckle, and the whole side for thirty two feet had to be new. Also a new deck on that side from thirty to thirty five feet. I had charge of her only eighteen days until she was launched and taken to Montrose. The cargo box

and inside lining were not replaced. We changed her from a bulk barge to a common freight barge. I don't know exactly what the repairs cost. The expense of repairs up to the time I quit, was about $365. That did not include some lumber bills. It would have cost about $1000 to replace the cargo box. If the cargo box, inside lining, and hog chains had been replaced, and the barge put as nearly as possible in the same condition as she was prior to the accident, to the best of my judgment, the difference in value between the barge thus patched up and repaired, and the barge before she was wrecked, would be, I should say, $500.

CROSS EXAMINATION.

It would have cost $1850 at a rough calculation, to have repaired the barge with her cargo box and hog chain, as good, or nearly as good as she was before the accident. There was no cargo that I could see on the barge, when I saw her the day after the accident; I afterwards got twenty pigs of lead from her. The barge lay in water from six to eight feet deep. Captain Davidson, superintendent of libellant's line, once offered me $650 to raise and repair the barge. That was before the water got down so we could see the extent of her injuries. Libellant has been running and using the barge since it was repaired. I estimate cost of raising and repairing the barge in this way: I put down $1000 for cargo box and damage, $850 for repairing the barge and hog chain. That includes every thing.

RE-DIRECT EXAMINATION.

As I went up to Ft. Madison the day after the accident, in a skiff, I found two barrels of tallow, and four more barrels below Ft. Madison. I got forty four or forty five sacks of oats. Steamers having much freight light over the rapids at an ordinary stage

of water. In estimating the cost of repairs put on the barge after she went to Montrose, I only judge from the amount of men that worked on her, the amount of materials used, and the time they were working.

W. W. KINNEAR, sworn:

Am thirty six years old. Live in Keokuk, Iowa. Occupation superintendent of people's line of tow boats, and agent of North Western Union Packet Company. My post of duty in 1871, was at LaCrosse, Wisconsin. I had charge of all libellant's barges—about forty nine in number. I know the barge Jack Reaney.—She belonged to libellant in spring of 1871. She was a model bulk barge, in good condition, worth about $3500. Saw the barge in a sunken condition near Atlee's mill. The libellant sold the wreck to the barge to me for $150, at St. Louis. Libellant advanced me the money to raise and repair her. I hired Harrison West to take charge of raising her, and he did so. She could not have been raised while the water was high without great expense. (Here witness described injuries to the barge.) It would not have been possible to have bulk headed and raised her without extraordinary expense and appliances, until the water receded to a lower stage. I kept an itemized account of all the expenses of repairing and the whole amount is $942.86. (The witness files an itemized account.)

Libellant paid the expense of raising and repairing, and charged it to me to be repaid by the hire of the barge after her repair, at $5 per day during the boating season. Before the accident, the barge was worth $10 to $15 per day. If she had been fully repaired, she would still have been worth about $500 less than before the accident. I am still the owner of the barge. I consid-

er her reasonable value, after her repairs were completed, from $1,800 to $2,000. The repairs on the barge were completed and she was ready for service about September 12, 1871, and they were prosecuted as expeditiously as possible.

CROSS EXAMINATION.

Before the Jack Reaney was repaired, I think from $8 to $10 per day would be a fair price for her hire the year round. I have been for over a year the agent of Libellant and looking after their interests. I was their agent and acting superintendent while I was having the barge repaired.

H. M. PATTON, being duly sworn testified as follows:

My age is 55 years and live in Montrose, Iowa. Have been a Steamboatman since 1846. Am a licensed pilot from Keokuk to Rock Island. Have had considerable experience in repairing barges, lighters and steamboats. I know something about value of barges under charter on this river. I have seen barge Jack Reaney and have towed her over the rapids frequently for the North Western Union Packet Company. Her value per day before wrecked would depend upon the amount of bulk grain that was to be handled. A fair average value per day for her in early part of 1871 would be from $10 to $15. This would depend upon whether you wanted to use her for sacks or bulk grain. She had no cargo box on her. She was a roof barge. Don't know whether her hog chain was lost. Her roof could have been put back on her and her damage or railing for $400. Freights were good in April, May and June; July and August they were scarce. The usual custom is to keep lights on all piers, rafts, lighters, flatboats. Have seen Atlee's upper pier below Fort Madison. I don't think I ever saw it before the accident. Since the accident I have always seen the light on the pier.

CROSS EXAMINATION.

Have seen barge Jack Reaney frequently since she was injured. I have superintended the repairs of barges and have raised several sunken barges, and repaired them. I have run as carpenter on steamboats. I have superintended the repairs of steamboats, barges and lighters, when on the ways for repairs. Have lived in Montrose at the Rapids since May, 1849. With the exception of four seasons I have been a steamboatman, from deck hand up. Lighters have been more largely gathered at Montrose than any other point on the river, for the reason that they are used at no other place except the rapids. Barges have been used all along the Mississippi river. Boats use the barges for the rapids more especially. I don't know what it would have cost to raise the Jack Reaney and take her to Montrose to put her on the ways immediately after she was sunk. I did not see the break in her. She could not have been made as good as she was before she was injured. What we call a cargo box is raised up about 30 inches above decks, decked over and caulked. The Jack Reaney had a pitch roof and not caulked. The cargo box is more costly than such roof as the Jack Reaney had. In addition to the repairs that were made on the Reaney after her injury, $400 more would have replaced the dunnage, roof and hog chain as before the injury. I don't think any boat or barge after she has been broken up and repaired, is worth more than two thirds of what she was before. If she was an old barge and her timbers a good deal worn by constant usage, the taking out old material and putting in new would have made her condition better. I don't know the age of the Jack Reaney. I think she was two or three years old from her appearance. The Jack Reaney, I think, when new would have been worth from $5,000 to $6,000. Barges usually run from two to three seasons before they need repairs.

H. C. GILLASPIE, being duly sworn, deposed as follows:

I live in Keokuk, am forty years of age, am a licensed pilot on the Mississippi river, and captain also, have been a licensed pilot for 5 or 6 years. I am acquainted with upper pier below Atlee's Mill. Have been by there on a few trips. Have landed this spring right between the piers to take on lumber. I landed between the upper pier and the shore. The boat was the steamer Cricket. She is about 22 feet wide, the width of the lighter I had in tow was also 22 feet. The lighter was along side of the boat, making a total width of 44 feet. I think this was in April or May of this year. Was not very well acquainted with the depth of water there, when I was in between the two piers. There was about four feet of water on the rapids at that time. When I made that landing, there was a middling stage of water. There is always good water outside the upper pier, even at low water, right up to the pier. Have been accustomed to seeing rafts moored along the shore in the night time. Have always found them with lights on them at night.

CROSS EXAMINATION.

When I was at Atlee's mill the water was three and one half above the lowest water. I would not swear positively to this. She drew 23 inches when at Atlee's mill. The barge drew 6 or 7 inches. There were no rafts lying between the pier and shore. There were logs lying in above the gravel bar and below French Creek. The gravel bar was then on the point of it. It was bare about as far out as the pier. There was not water enough to run over the point of it. When I was there, I run up within 25 feet of the point of the gravel bar, and come round the bar and about midway between that and the bar out towards the Illinois shore. This latter bar is 300 or 400 feet probably from the point of the

gravel bar in low water or middling stage of water. Boats usually run from fifty feet to seventy-five yards—sometimes more and sometimes they come within 25 feet of the pier—outside of that pier. It is all good water there. It is good water from the upper pier, out four or five hundred feet; about as good water around the pier as there is there. The boat and the lighters I had there about filled up the water space between the pier and the shore.

CHARLES GILLASPIE sworn.

Am 29 years old, live in Keokuk, Iowa, occupation is that of pilot and steamboat master; have been licensed pilot for 9 years; am familiar with the channel of the river about Atlee's mill; have landed boats at the Iowa shore between these piers; think I have run over the place where these piers now stands; landed a steamboat between the piers about six weeks ago; it was a pretty fair stage of water; the upper pier is pretty close to the channel; we run pretty close to the pier on going up and close to the point of the gravel bar; if the upper pier were removed, at an ordinary stage of water, I think boats could run over place where it now stands; recollect seeing a rock pile about there in 1870; don't recollect the location of it; at the time I went there the rock pile was probably ten feet above water and the water was a fair stage; at a high stage of water the rock pile would have been submerged; the channel measuring across from the upper pier is from one hundred and fifty to two hundred feet wide; there is a sand bar opposite that gravel point, from the gravel point out to the sand bar at a low stage is not over one hundred feet; the bar throws the current in towards the pier; the current sets off from the gravel point shortly after leaving the landing at Fort Madison; boats run down from the shore pretty close; run close by the gravel point and fifty or sixty feet from the pier; if a boat

would hold a straight course parallel with the shore toward the upper pier it would not I think be obstructed by the gravel bar; think the pier is a little outside of the edge of the gravel bar; think there would be four or five feet over the bar at high water; on my part I always shun it; the boat I run is a small boat and not so hard to keep out as a large one; if wind was blowing toward the Iowa shore descending boats would have to hold out pretty strong to keep from running on the pier; rafts tied to the shore usually have lights on them; piers are four or five feet out of water at a high stage of the river; on a bright night a descending pilot could see the pier a couple of hundred yards; on a dark night he probably could not see it at all.

CROSS EXAMINATION.

Have known the river at Atlee's mill nine or ten years; have frequently seen rafts of logs tied there; don't recollect to have seen them extend out beyond the pier; pilots would not run against the logs; they run close to them; there is the same necessity of drawing the boats out from the rafts as the piers; would keep as close to the bar on the Illinois side as I could; there is not the same tendency to flankage passing the gravel bar as below.

R. B. HATCH, sworn.

Am about thirty-seven years old and live in Ft. Madison; occupation is selling lumber on the Mississippi river; have piloted rafts on the Mississippi for fourteen years; am familiar with the channel about Atlee's mill, and with location of piers there; have frequently passed by there on steamboats; am familiar with the navigable channel there; the pier is in the channel; have seen boats run right where the piers are now in a fair stage of water; in a fair stage of water rafts have some trouble in passing the

piers; in high water they have great difficulty; the natural set of the water is on the pier; have to pull hard to get by it; with a slight wind it is very difficult; at a high stage of water the rock pile would have been covered; at an ordinary stage it would have been covered, I think; in April, 1871 water was pretty high; should judge it was about four feet above water then; on a dark night, owing to the shade of the shore, the pier could be seen but a short distance; on a fair starlight night it could be seen about two hundred or three hundred yards; at that time the water was five or six feet deep on the gravel bar; do not remember to have seen a light on pier before accident but have since; have seen rafts moored at Atlee's mill; rafts did not extend out so far as the pier in a fair stage of water; it is always the custom to keep lights on rafts when moored to the shore; never remember to have seen rafts at Atlee's mill without having lights until the piers were built; that pier constitutes a great obstruction to navigation and increases the perils and dangers of navigation.

CROSS EXAMINATION.

The pier at ordinary stage of water is two hundred or two hundred and twenty-five feet from Iowa shore; I judge from strings of lumber; low water makes a difference of seventy-five or one hundred feet; a space of two hundred feet is requisite for mooring logs; the shore slopes considerably at the mill; the water at the pier is always deep; I gave Mr. Davidson the names of some pilots at his request.

W. R. SLOCOMB, sworn.

Am thirty-two years of age, reside in Minnesota. Am a licensed pilot. On the 23d of April, 1871, when the Phil Sheridan came down by Ft. Madison with barge Jack Reaney in tow, I was standing on the stern of the steamer Champion, at the levee at

Ft. Madison. It was a dark night. I saw her strike the pier at Atlee's mill. I did not see it strike, I heard the crash. I have always thought there was pretty good water around the upper pier. That pier stands, I think, in the right hand channel going down. A raft has to commence pulling some distance above the pier in order to avoid hitting it. The water sets in there very strong. I rubbed the pier with a raft last summer once about daylight in the morning. I think the pier, like all others, is a regular nuisance.

CROSS EXAMINATION.

I am raft pilot. I have run past Ft. Madison six or seven times a year with rafts for five years. Have made ten or twelve trips since the piers were erected. I have seen rafts inside the pier but never noticed any outside. I should think the channel of the river just opposite the upper pier was two hundred and fifty or three hundred feet wide, in ordinary stage of water. I never measured I gave a rough guess. I have noticed the gravel bank above the pier; after passing said gravel bank, the channel runs right straight down the river. I should think the water running against the point of that bar would naturally turn the water out towards the Illinois shore. The pier never interfered with me except on the one occasion. It is difficult to answer whether a skillful pilot would have any difficulty in passing the gravel bank and upper pier. The wind very often blows a raft on shore. It may be in your favor or against you. It would be more difficult to keep off the pier than off the gravel bank, if the wind was blowing toward the Iowa shore. The water runs away from the point and the pier divides the water.

RE-DIRECT EXAMINATION.

The current runs right straight along anywhere between rear of the bar and the bank of the river. The water naturally sets towards the Iowa shore until you get below the lower pier. It don't make any difference how skillful a pilot he is likely to hit anything on a dark night. It was quite dark when this accident occured.

J. A. WOOLVERTON, sworn.

Am forty-three years of age, live in Muscatine. Am a ship carpenter, and was in spring and summer of 1871, and for some thirty years. I knew the barge Jack Reaney. I saw her sunk at the pier near Atlee's mill but know nothing about the sinking. She was a well built barge. She had a roof cargo box, had a good hog chain—all in good condition, and sea worthy. (Witness describes particularly the condition of barge after the accident.) Her condition was very bad indeed. I helped raise her and repaired her all up and launched her again. I was about six weeks in making the repairs, (describes particularly the repairs made.) The barge was injured all over. Her general condition after being repaired was only middling. Her cargo box was not put in again. Inside floor and lining was broken and destroyed in getting it out. To replace these would have cost about $545. The barge could not be made as good, strong, staunch and sea worthy and valuable after collision as she was before. The difference between the value before collision and after she had been as fully repaired as she could have been, about $300. After being repaired she was worth $800 to $1,000 less than before the accident; the water was very high between April 23d, and July 24th, 1871, and the barge could not have been bulk headed and raised till the water fell; two or three boats were there and tried to raise said barge,

but gave it up; was about six weeks in making repairs on barge; no amount of repairs could make the barge as good as she was prior to collision; barges were worth about $10 per day.

WILLIAM REDPATH, sworn.

My age forty years; reside in St. Louis; know Plaintiff but not Mr. Atlee. Was on or about April 23d, 1871, and am still, in the employ of the Northern Line Packet Co.; saw barge Jack Reaney in 1869 or 1870 and frequently afterwards; believe said barge belonged to North Western Union Packet Co., at time of accident; there were lost on the barge 34 sacks of wheat damaged; 38 sacks of wheat totally lost; 69 sacks of oats totally lost; 41 sacks of potatoes lost; 9 barrels of tallow lost and 43 pigs of lead lost; this is what was lost by consignees in St. Louis; don't know what loss to consignees between St. Louis and place where barge sank; can only testify as to freight consigned to St. Louis; know of no other losses.

CROSS EXAMINATION.

Am chief delivery clerk for the Northern Line Packet Co., and have been for eight years.

WILLIAM F. DAVIDSON, sworn.

My age is forty-six years; reside in St. Louis. Know Plaintiff but not Mr. Atlee. On April 23d, 1871, was and am still in the employ of North Western Union Packet Co. Am President of that Company. Knew the Jack Reaney; saw her prior to accident often. The Sheridan and barge belonged to the North Western Union Packet Co.; barge was worth $10 to $15 per day. There was a demand for barges at the time. Plaintiff sustained loss on barge; a loss of the time of the Sheridan; also a loss in raising said barge, and in the use of barge and loss on freight.

CROSS EXAMINATION.

The barge Jack Reaney was not insured, the freight to which the boat was entitled was not insured; nothing has been received by the company for insurance.

WILLIAM F. DAVIDSON, recalled:

My age is nearly forty-seven years. Occupation is steamboating; am President of North Western Union Packet Co. Have been steamboating about thirty years and have been President of said Co., for six years; have personal knowledge of barge Jack Reaney. She was built for our company about three years ago; she was class number one and was in good order; she belonged to company at the time of accident; was loaded with miscellaneous merchandise; barges used on the Upper Mississippi are what we call model barges. I consider the Jack Reaney worth prior to accident $3,500; barge was badly wrecked; we sold her after she was wrecked, to W. W. Kinnear for $150.

WILLIAM RHODES, sworn.

Am forty-seven years old; reside temporarily in St. Louis; occupation is Secretary of the North Western Union Packet Company; have been steamboating about sixteen years, and an officer of the company for about six years; have personal knowledge of the Jack Reaney; she was built for our company three years ago; she was what we call a model barge. She belonged to North Western Union Packet Co., at time of accident; in my opinion the barge Jack Reaney was worth $3,500, just prior to wreck; she was sold after the wreck to W. W. Kinnear for $150.

WILLIAM W. KINNEAR, sworn.

My age is thirty-six years; reside at La Crosse, Wisconsin. Occupation is agent for the North Western Union Packet Compa-

ny; am also a ship carpenter; have been in this business about eight years; my knowledge of the value of barges on the upper Mississippi is from my experience with them; have had personal knowledge of the barge Jack Reaney and of her having been wrecked at Ft. Madison; considered the said barge previous to wreck worth $3,500; was worth after the accident about $150.

WILLIAM H. BARNES, sworn.

Am thirty years of age and reside in Illinois. Know the North Western Union Packet company, but not Atlee. Was in the employ of the company above named on or about April 23d, 1871, as second clerk of steamer Phil Sheridan; on the night of April 23, 1871, the barge Jack Reaney was in tow of steamboat Sheridan, on the starboard side; we were going from St. Paul to St. Louis; just below Ft. Madison the said barge collided with a pier in Mississippi river and sunk; was asleep at time. On coming out of stateroom I learned that said barge had struck on a mill pier; ran down on barge to assist in removing freight from barge; barge sunk in a very few minutes; she was badly torn to pieces, and we could not prevent her from sinking when she did; can not state what cargo was on barge as we had been lighting the boat preparatory to going over the rapids; the following portions of cargo were lost: 45 sacks of barley, 38 sacks of wheat, 69 sacks of oats, 41 sacks of potatoes, 43 pigs of lead, and 9 barrels of tallow; 34 sacks of wheat were damaged, it was thoroughly wet; wheat was worth at that time and place, $1.30 a bushel; each sack contained about two bushels; damaged wheat was not worth more than 25 cents a bushel; the value of cargo lost was $888.58; cannot state how much freight money was lost.

CROSS EXAMINATION.

I did not see the colliding of the barge against the pier; cargo at the time was on top of barge; cannot state whether that portion of the cargo lost was insured.

EVIDENCE ON BEHALF OF RESPONDENT.

Respondent offered in evidence certain deeds of conveyance, showing that the real estate upon which Atlee's mill stands and which borders on the Mississippi river at the point where the piers are located, was, when said piers were built, and before and since that time, the property of Respondent, Samuel Atlee. Also an admission in writing signed by Counsel for Libellant, that the manual possession was passed with the several deeds of conveyance. (As Respondent's title to this realty is not questioned these documents which are somewhat volumious are not abstracted here, but will be found in full in the record.)

B. W. DAVIS, sworn.

Am forty-four years of age, reside in Ft. Madison. Was formerly steamboat captain on upper Mississippi river, between Keokuk and Davenport, but most of the time between Ft. Madison and Davenport. Was so engaged from 1860 to 1865. Am acquainted with location of Atlee's mill below Ft. Madison. Also with the gravel bar or delta at French's creek just above said mill. I do not know how the current now runs after it passes around that gravel point. I used to know. It used to run from the Iowa shore toward the Illinois shore, when I was on the river. It started off quartering from the Iowa shore towards the Illinois shore, or seemed to. The channel has always been nearer the Iowa shore opposite Atlee's mill, than the Illinois or Island shore. The

channel is quite wide opposite Atlee's mill. There is good water from Atlee's mill to two-thirds across the river in my judgment. When I navigated the river the usual route of steamboats was three or four hundred feet outside of the rafts that were lying in front of Atlee's mill. I do not know how wide those rafts usually were. The channel used to run from the gravel point a little quartering toward the Island or Illinois shore. During the five years I was navigating I made a trip to Rock Island every two days during the navigation season. I have a good many times passed the gravel bank in the river in front of Atlee's mill in the night time. I am well acquainted with the location of the upper pier, as I can see it from the shore. I have never passed that pier in daylight on a steamboat or any other boat. I should have no hesitation in saying that it (the pier) is no obstruction in steamboat navigation as boats run when I was navigating. The channel was wide there, a boat could run out three hundred or more feet, or run in close to the rafts.

CROSS EXAMINATION.

I was never a pilot, I do not consider myself an expert in matters of channel or current in the Mississippi river. I have not navigated the river about Atlee's mill since 1865. My recollection is very clear and distinct about the direction of the channel below the gravel bar. While navigating the river, I performed the ordinary duties of a captain, the boat was in charge of pilot as to channel and direction. I know from observing boats run down past Atlee's mill nearly every week, where the channel was in April, 1870. The boats seem to run opposite Atlee's mill in the same direction they did when I was on the river and I do not think there has been any change in the channel for a number of years there; I do not know of my own personal knowledge I only know

by observing boats run there. Boats could have run where the upper pier stands, from 1860 to 1865; or any where along that shore. I have landed there many a time against rafts. Think I have seen other boats do the same. Atlee most generally had rafts next to his mill. I don't remember of ever passing there without seeing a raft. Sometimes had very few logs there. I almost always saw lights there, but whether they were on the rafts I cannot say. I think the channel began to turn toward the Illinois shore right at the point of the gravel bar. Pilots now run down by the piers and make the crossing to the Illinois shore below the piers. It is customary for the owners of rafts tied to the shore to keep lights on them, when they are landed in what are considered close or dangerous places. I have seen logs extending from the gravel bar to down below the mill. It is more difficult to navigate boats with a barge attached than without.

GEO. ANDERSON, sworn.

I reside in Montrose, am forty-six years old. Am a ship carpenter, and have followed that business since I was a boy. I saw the Jack Reaney after she was brought to Montrose to be repaired. She was sunk in April, 1871. I think the barge could have been floated to Montrose for repairs immediately after the accident, or within a few days. I have known barges that were sunk in the Mississippi and filled with water and floated in that condition to Montrose. The Jack Reaney could have been floated to Montrose if she had no load.

CROSS EXAMINATION.

I first saw the barge when they were blocking her up at Atlee's mill to repair her, three or four weeks before she was taken to Montrose. Made no close examination of her at that time. She

was repaired in part before she was taken to Montrose. The repairs seemed to show that she had rather a bad bruise in her side. I think the river was rising to the brink height in April, 1871,—but think it was getting towards the top of it.

JOHN ATLEE, sworn;

I am 56 years old; reside at Fort Madison. I was a carpenter in early life. I commenced building what is called the Atlee mill in 1854. I owned the ground the mill is located on, and afterwards conveyed it to my son Samuel Atlee, the Respondent in this suit. The mill lands consist of about thirty acres lying on the bank of the river. Most of my time, since the Atlee mill was built, has been employed at the mill. I know the landing and channel in front of the mill intimately, and am acquainted with the gravel point at the mouth of French creek. I have landed a great many rafts in front of said mill in the last twelve years or more up to the present time. I am acquainted with the channel where steamboats ordinarily run in front of said mill. I am acquainted with the location of the pier in front of said mill. The steamboats run within two to four hundred feet of said pier. I have seen them run a mile from it. I have rode in them when they did it; that was on the other side of the island. At the point of the bar, or delta, at the mouth of French creek, the current sets very hard toward the island on the Illinois side. After a raft passes said gravel point, at a low stage of water or a medium stage, they pass outside of the gravel bar and then pass rather straight down the river, angling some towards the Illinois shore, until they get down about opposite the mill when they pull for the Illinois shore, to keep off a bar on the Iowa side below the mill. This latter is a gravel bar and extends from the Iowa shore. Rafts pass from one hundred to three hundred feet outside of the pier

at low or medium stage of water. We have from a hundred to a hundred and forty men at work in and about said mill, besides from twenty to forty men on the river running on rafts. Most of our sales of lumber are made at the Atlee mills, at Ft. Madison. We manufacture at said mill, Lumber, Shingles, Lath, Paling, Doors, Sash Frames, Boxes, Bridge Timbers, &c. We aim to keep rafts in front of the mill in the river during the whole of the summer season. We do not always have a full raft, but we are never out but a few days at a time. Sometimes have two or three rafts laying there at a time. For the past five years we have had logs during all the summer season; also, have had logs there in spring and fall—seven months in the year on an average. We work up between thirty and forty thousand feet of logs per day. For five or six years we have been turning out from $800 to $1000 worth of manufactured articles per day. A medium sized raft of logs is about two hundred feet wide and four hundred and fifty feet long. During the last dozen years a raft of logs has extended out sometimes seventy-five feet beyond the pier out in the river. We use about two hundred feet in width and about thirteen hundred feet in length in front of our mill for logs &c. The piers are put up to fasten booms to, and to protect our rafts from winds and waves. The waves from boats would tear our rafts to pieces, but for the booms fastened to piers. Rafts have to be hauled in by line, &c., after they pass the gravel point, (witness explains how this is done). Otherwise they would never come in by that pier. They would ordinarily go out one hundred feet from the pier. I know it from experience. We have used a steamboat for bringing rafts from the pinery and running them into our booms. I can only remember seventeen piers and booms on the Mississippi river, from Keokuk to St. Paul. There are some booms where there are no piers, some of them have been in the

river ten years or more. I know from personal observation that a sunken water craft will float if there is no load in her, and where there is water enough to cover every part of it. I have caught them in the river with their whole side bursted in. I do not know how deep the water was on the gravel bar at mouth of French creek, at time of accident, but know that steamboat could not have gone over it. I think the bar was dry about one hundred feet from shore. The current is very swift, after passing the bar at the mouth of French creek. I have made an experiment by throwing in logs of wood up by the ferry landing, and let them float down when the wind was slightly on this shore, and they passed around the bar and went from fifty to one hundred feet outside of the pier. I have also seen boats, skiffs, &c., drift down, and they would do the same. Have also let logs loose from the rafts above that bar, and have followed them down, thinking to catch them at that point of the bar, but the current would take them right out, and I would have to get a boat and go after them. The upper pier was erected between the fall of 1870 and spring of 1871. There were some rocks in the place where the pier now stands, prior to 1870. Part of the time the rock pile there was four or five feet out of water, and part of the time not out at all, during the summer and fall of 1870. Said rock pile was between thirty and forty feet at its base. I think there was six or eight feet of the pier out of water at the time of the injury to the Jack Reaney. When I built the mill, there were a number of large boulders lying along the shore. We have moved a great many, because they were in the way of boats and rafts. I have never seen a steamboat pass down where the upper pier now stands, and I don't believe they ever did. They could not have passed there while we had rafts there. I have seen thousands of boats and rafts pass the mill altogether. I have seen twenty rafts a day

pass. The danger from waves caused me to notice more particularly all passing boats.

CROSS EXAMINATION.

Am father of respondent; am interested in this suit; own an interest in property; rock pile was covered with water in 1870, when river was at a high stage; rock pile was thirty or forty feet at base; pier was built on top of rock pile; pier is about four or five feet higher than rock pile; think rock pile was finished before fall of 1870; crib or wood work was filled with stone; depth of stone put in crib was twelve or thirteen feet; crib and stone contained in it were put on top of rock pile in winter of 1870 and 1871; think six or eight feet of pier was out of water at the time of accident; did not measure it; water at that time was at a medium stage; water was about six feet deep on outside of rock pile; it was three or four feet deep all around the pier; timber is let into rock pile; the original rock pile, if pier were away, would have been out of water at time of collision; had only a few logs there at time of accident; never saw a steamboat land at shore between upper pier and bank of river; have never seen the Prescott land there; could not land there this season, because I have a boom from one pier to the other, and most of summer have had rafts of logs lying there, and part of them are there yet; last summer had a raft of sawed lumber there that projected out thirty feet at least outside of the piers; our rafts have not projected out farther since piers were built than before; our rafts, as a general thing, project out beyond the piers from thirty to sixty feet; at a high stage of water it would be thirty five feet deep thirty and sixty feet beyond the piers; at low stage it would be twenty or twenty five feet less; at time of collision think about 100 feet of gravel bar was dry from the bluff bank, and out for two hundred feet; don't think it

was three feet deep; point of gravel bar is over three hundred feet from bluff bank; it gets dry that far with no water on it; bluff bank at gravel bar is not as far back as railroad bridge; gravel bar extends as far back as railroad bridge; gravel bar is covered with water some distance from point of gravel bar, but it is not very deep; it is not what I call a flat bar; it is not very low stage of water at present; it is about three feet above low stage; did not measure water at time of accident; boats coming down the river come along shore 'till just above the gravel bar, then they turn toward the Illinois shore, until they pass that bar, and then angle off, some more, some less, toward the Illinois shore; they have some six hundred or seven hundred feet of water in width to run in; that when water is low or at a medium stage; there is a sand bar next the island; that sand bar has not been increasing in length for last seven years; current is very swift at point of gravel bar; threw the things before mentioned about ten feet out into the channel when they floated by the piers; the skiff before mentioned was one hundred feet out; wind would catch skiff and blow it in; one end of barge was on shore and one end out of water when I saw her; broken end was out in eight feet water; always keep rafts just below gravel bar in summer; bar is six hundred or eight hundred feet below upper pier, and projects as far or farther than the upper gravel bar; we have been in habit of keeping lights on rafts; when they are lying in dangerous position we keep lights; when not dangerous we do not. The mill buildings are not very valuable, cost near $10,000. The machinery in them did not cost less than $50,000. We have four mill buildings, (gives their dimensions), three of them are boiler houses attached to the mill.

RE-DIRECT EXAMINATION.

When I gave estimate of the depth of the water outside the

pier toward the channel, it was all guess work, I have not measured it.

B. F. ANDERSON, sworn:

I reside in Ft. Madison; am fifty seven years old; occupation carpenter, and have worked at ship carpenter business four or five years, at St. Louis, Montrose and other points on Mississippi river; worked on the barge Jack Reaney after the collision; worked on her below Atlee's mill on bank of river; worked on barge eighteen or twenty days; she was raised before I went there; have worked a great deal on barges; was engaged on break on shore side of barge near midship; break was all in one place; broke clear through the outside planking, and the effects of the break extended perhaps fifteen or twenty feet aft, but bottom was not much injured; ten or fifteen floor timbers were broken; keel was not injured; kelson was not injured but loose; it was sprung up in middle; it was thrown off its place, but did not break it; we put on iron clamps, drew it back and spiked it as it was before; keel is plank under the kelson extending fore and aft lengthwise of boat; the keel is first timber laid in building a boat, and then bottom plank are nailed on; kelson is a timber running fore and aft on inside in center of boat over the keel; the injury was all at one side of the keel, and not the keel itself; injury could have been repaired with new material so that the barge would have been as good as before; think the whole inside of boat was lined; same over head; the dunnage is the inside lining in boats intended to carry bulk grain; about fifty or sixty feet in length of dunnage ought to come off one side, and thirty or forty feet off bottom in length; probably twelve hundred or fourteen hundred square feet would have to come off and be replaced; think it would cost fifty or fifty five dollars to take off and replace it; lumber would cost

about $36, and it would cost $12 or $15 to put it on; the old dunnage was rather rotten; in some places was rotten through; they were good but not fit to put on again; got some of the dunnage after it was taken off; most of it was rotten; was going to use it for fire wood; Mr. Kinnear gave it to me to satisfy a claim of $4 or $5; roofing was made of match flooring in shape of house roof; what I saw appeared to be good; if all parts of roof were as good as what I saw, it would do to put on again; don't see any necessity for taking off dunnage unless to clean barge; they took away the dunnage that I did not get; would have to take off about one fourth of dunage of barge to repair it; there was cabin on barge; Mr. Kinnear said he would take it away with him; Wm. Wright and Mr. Wolverton worked with me; Mr. Kinnear employed me; Wright, Wolverton and myself were the only carpenters on the work; Harrison West was helping to heel up the boat as a sort of superintendent; don't think West is a ship carpenter; have known him for fifteen or sixteen years; if all the lumber except what was injured was left in barge, and the injury repaired I think she would be worth as much money as before the injury; there were two breaks in that barge, forward of the main break that needed repairs; Mr. Wolverton repaired those breaks; don't know whether said breaks were caused by pier or not; they were on same side, one twenty five or thirty feet, the other about fifty feet forward of main break; judged that they were old breaks from their appearance; think barge could have been used for transporting grain with those breaks; would cost $25 or $30 to repair the old breaks; think carpenter work would amount to $150 or $160; don't know what material would cost; don't know any good reason for taking off dunnage and roof, except so far as we had to take it off to repair the break; barge might have been floated to ways at Montrose, in the condition she was, provided there was

good water; I believe a barge with hole in her, and when she fills with water, will float if there is no cargo.

CROSS EXAMINATION.

Commenced working last summer; can't remember exactly when. It was very hot weather. Barge had been raised when I began working. She had not been bulk headed. When we commenced water was about knee deep about barge on outside. Was partly out of water. Repairs could not have been made until water receded. Didn't work at Montrose on her. Don't know what repairs were made at Montrose. Know of but one knuckle injured which I spoke of as an old break. Don't think any of the dunnage taken off was used in repairing. Barge was not broken in badly for twenty feet in length. Don't think we had to take off plank twenty feet to get in long plank to repair the break. To repair the hole we had to let plank run over each side of break. Deck was stove in. Bottom was stove in probably for a short distance. Am a house carpenter by trade.

RE-DIRECT EXAMINATION.

If accident had not happened, the dunnage that was in barge might have been patched up to last some little time; if there had been ways here, the barge could have been drawn out here and repaired as well as at Montrose.

JAMES W. CAMPBELL, sworn:

My age is forty seven years. Reside in Ft. Madison, Iowa.—Commenced being a river man in 1844, on upper Mississippi, and was continually on the river during navigation, with the exception of 1859, from 1844 until November 1871; have been engaged the greater part of my time in piloting and commanding boats. Have been a licensed pilot since 1844. Have been engaged on the

river constantly since 1863. A great portion of the time we terminated at the Union Warehouse in lower part of Ft. Madison: am acquainted with the piers at Atlee's mill. Was acquainted with the pile of rocks which lay where the pier is erected. It was put there the year before the pier was erected. Am acquainted with the gravel bar at the mouth of French creek. Immediately above this delta the shore for three hundred or four hundred yards is in a crescent shape. The channel follows the shore to the terminus of the delta, at French Creek. From that point the channel runs at an angle of thirty to thirty three degrees from main shore opposite upper pier. The upper pier I should judge to be fifteen feet from the shore. Immediately along the shore, at or about the pier, there are nigger heads, or boulders. Those boulders extend from the upper pier down below the pork house. I have struck the same with boats. Was always taught or instructed by Isaiah N. Wagner, pilot, to avoid the shore from a point near the upper pier to a point near or opposite the pork house. Do not consider the pier to be any more obstruction to navigation of Mississippi river than the piers or docks at Muscatine, LaCrosse, Fountain City, Hudson, and several other places. Judge the channel to be at a point opposite the pier from three hundred and fifty to four hundred feet wide from the shore. At the delta I suppose the channel to be about one hundred and fifty feet wide. The bar comes in near. There is a bar in front of the pier making out from the Illinois shore. The bar at the point of the delta runs at an angle of about forty degrees with a parallel line a little above the point of the delta. The docks or piers at the places above mentioned were built for the convenience of steam boats. The one at Muscatine was built by the Northern Line Packet Company. At LaCrosse there are two, one built by a railroad company and one by city corporation. At

Fountain City the docks were built by individuals to induce the boats to land there. Boats pass from two hundred to two hundred and fifty feet from pier in ordinary stage of water. Commencing at the point of the parallel line of the shore, it continues to run on in that direction till near one third of the distance of the width of the main river, below or opposite the pork house.—Thence toward the Illinois shore at an angle of about forty five degrees until it strikes an island on toward the Illinois shore.—Two hundred to two hundred and fifty feet from pier is near center of channel. Have known rafts there for seven or eight years. Have known steamers to pass over place where pier stands in high but not in low water. Have not known any such passes since Atlee's mills were built or rafts were there. As near as I can remember saw a boat pass there in June, 1851, in high water. A barge with a portion of side smashed in and filled with water, provided she had no load, would float with proper fastenings — that is tow lines. In October, 1857, with barge in tow, having torn about twenty five feet out of the side of the barge, towed her from point where she was to point below, thence across the river to mouth of Coon slough. Barge had two and one half tons of cannon balls on her as freight. A boat injured as that barge was cannot be repaired to be as good, if old. With a new one there is not much difference. B. F. Anderson is a good ship carpenter.

CROSS EXAMINATION.

Know Harrison West. Have never known him to be engaged in raising but the one barge at Atlee's mill. Have known him to be engaged as supercargo at Montrose. Have been on boats of Northern Line Packet Company for last six or seven years. Have raised steamboats, but not barges. When a barge or boat is sunk there is always a certain amount of injury from being sunken be-

side the injury of collision. This spring there were no logs at Atlee's. There have not been many times when there were no logs there during last six or seven years. Rafts there have varied considerably in size. Have seen no boats land inside piers within the last few years. Lights are never kept on empty barges. Some log rafts keep lights on them. Rafts when running always have lights. When rafts are moored to shore in a dangerous part of river, it is customary to keep lights on them. At a low stage of water I should judge water to be twenty inches deep on the inside, and about three feet on outside of upper pier. Can not say positively. Have never measured it. Was there when the piers were erected. It is about seven or eight feet deep around the pier in ordinary stage. There is a sand bar a little distance out from gravel bar extending down the river as far or farther than the upper pier. From upper end of sand bar or the part opposite gravel bar to point of gravel bar is more than three hundred and fifty feet. Sounded it myself. The bars run down from a mile to a mile and a half. The sand bar is from four hundred to four hundred and fifty feet from the shore opposite the pier. The plat before me, drawn by E. H. Worrell, does not show that sand bar.—It shows lower end, the crescent shape of the river above gravel bar. The boulders before mentioned are ten to thirty feet from shore. Docks above here are made for steamboats to land at. A boat running from point of gravel bar at an angle of thirty three degrees in the river would run about two hundred and twenty five or two hundred and fifty feet from shore opposite the pier. I consider it easier to handle boats with barges than without them.—Sometimes the bow of barge projects thirty or forty feet forward of the boat. If barge is loaded and boat is light, the barge pulls off to the right; when barge is light and boat loaded, bow of barge even or aft of bow of boat, it causes boat to run steadier; boat

will run steadier with barge in shoal water; in deep water it has little effect.

RE-DIRECT EXAMINATION.

Know Phil Sheridan, and consider her a difficult boat to handle. Have not known boats to run over gravel bar even in a high stage of water for nine or ten years. There are no lights kept on dock or piers heretofore mentioned, at night time.

RE-CROSS EXAMINATION.

Piers on river above this point have no lights except when persons get on them for their business with boats.

August 29th, 1872, A. B. WOODWARD, sworn:

My age is thirty six years. I reside at Ft. Madison, Iowa. — Have resided here about two years. My business is that of a raft pilot from Reid's landing to St. Louis, Missouri, on the Mississippi. I have a pilots license between those two places on the Mississippi. I sometimes pilot boats which tow rafts, and sometimes pilot rafts which float without tow boats. I am acquainted with the channel of the river in front of Atlee's mill at Ft. Madison. The channel runs down the river, starting from the Madison levee, running two hundred yards out from the levee, and runs down a little ways, and then back to the shore a little below the Union Warehouse. There it crosses over quartering down the river two hundred yards from the upper pier. It leaves the shore out or a little above the gravel bar and goes out into the river one hundred yards out from the pier.

CROSS EXAMINATION.

Channel of the river is one hundred yards from the upper pier. The channel there is two hundred yards broad. Should a boat

pass over the point of the gravel bar it would hit the pier. The sand bar opposite the point of the gravel bar does not extend as far down as the upper pier. It extends within a hundred yards of the line of the pier. I cannot say exactly how deep the water is around the upper pier. I am familiar with the depth of the water in that vicinity. I can, I think, tell very nearly how deep the water is at that point. I think at an ordinary stage of water it is from four to five feet deep in that vicinity. This is an ordinary stage of water. I don't think the water can be over two feet deep around the pier at a low stage of water. The difference between a low and ordinary stage of water is between two and four feet. The difference between a low and high stage of water is eight feet. I suppose the water around that pier at a high stage to be ten feet deep. Don't know heighth of pier. Have never run boats or rafts over the point where pier stands. Have run rafts near the pier, but not boats, in windy weather. The effect of a side wind was to drive a raft to shore. The wind will drive a raft a shore any where. I don't recollect of ever hitting the pier with a raft. I do not remember of ever rubbing it; have been pretty close to it at times. If a raft be running rather close to the pier and the wind blowing on shore, the navigation would, I presume, be more dangerous than if the pier was not there. It is customary when rafts are lying at shore, to keep a light on them. The effect of the sand bar which lays out in the river from the pier, upon the current, is that when the water drops over, it has the effect to drain the water out into the river toward the Illinois shore. On the western or Iowa side of that bar it has a tendency to drive some portion of that water against the gravel bar. That sand bar has been increasing in length down the river for several years. We run within fifty feet of the gravel bar, that is, the upper part of it. There is good water up to the gravel bar.

The shore circles in a bend and goes out above the gravel bar. I claim to be a tow boat pilot, as I have license as such. We tow rafts mostly; other things if called on. Never piloted any thing larger than ordinary tow boats. Have been piloting rafts past Fort Madison since 1860.

RE-DIRECT.

I have never measured depth of water around the pier, nor the heighth of the pier. Rafts are from 160 to 200 feet in width. In an ordinary stage of water, a raft after passing safely the gravel point, if not interfered with by wind, would pass fifty feet outside of the upper pier, I have never found that pier any obstruction to the channel of the river—don't consider it in the channel. On a rising river rafts have a tendency toward shore, but at no other time, unless it is in places where the water sets in. The water does set in to the Iowa shore above the gravel bar. At a high stage of water the river flows over it. I suppose a raft coming down the river, with no one to guide it, the gravel bar being bare, would not hit the gravel bar, unless there was some wind. I think the gravel bar is as far out as I have noticed it for years. If a raft should hit the gravel bar I think she would not hit the shore or bank below without some wind, as the water draws out from there.

JAMES W. CAMPBELL, recalled.

I do not consider that pier an obstruction to navigation, know of piers for booms in front of saw mills at other places; never have seen lights on the piers at Burlington, Muscatine, Davenport, excepting at one time on piers opposite mill at Muscatine; think the safety of navigation does not require lights on Atlee's pier for persons who know channel.

E. G. WILSON, sworn.

Am fifty-two years old; reside in Ft. Madison; business, dry-goods merchant; can see down the river past Atlee's mill for about four miles. Know the way boats run. Channel runs along Iowa shore to French Creek and then strikes across towards Ketchel's Island about two thirds of the way; thence across to the Iowa shore just below the Pork House. That is one of the channels; the other channel crosses over and runs along the Ketchel's Island that is, about two thirds the way down the Island, and continues along down; both crossings are made at the same point; think boats go about one hundred and fifty yards from upper pier, I judge, looking from my store door; don't remember to have ever seen a boat run close to the shore in front of Atlee's mill, except small raft boats for fuel; my store is about half a mile from upper pier and five hundred and sixteen feet below steamboat landing; have never been a pilot or steamboat man; think I know that channel by daily observation; boats reaching gravel bar at French Creek cross toward the Island from gravel bar then, after getting about two thirds toward Island, they cross back to Iowa shore a little below Pork House; think there is a sand bar outside of gravel bar.

R. H. HEATH, sworn.

Made this map or diagram myself. I made the surveys upon which it is based, with the assistance of others. Am a practical surveyor. This diagram is a correct map according to survey of Mississippi river in the vicinity of Atlee's mill; made the survey October 9th, 1871; it was very low water; have recently made a survey of navigable part of Mississippi river immediately in front of gravel point of bar made by French Creek; made it this month. Seventy feet from that point would make navigable water at all

stages; water ten feet deep extends out six hundred feet; in some places it is forty feet deep; made a measurement of navigable water in front of Atlee's upper pier about the 13th or 14th of this month; water is seven and a half feet deep at pier and a very short distance out it is over ten feet deep; it is over ten feet, twenty feet out; only used a ten foot measure; it was about five hundred and sixty feet of water over ten feet deep, out in river opposite upper pier; sand bar was not covered with water at time of survey; it was comparatively low water at the time I made survey.

CROSS EXAMINATION.

Top of pier was fifteen feet above low water mark of 1871; water was lowest that I know of that year, except in 1864; don't know how deep water is ten feet from pier; water was higher in August, 1872 than it was in October, 1871; there may have been a foot or fifteen inches difference; the first sounding was six feet deep, twenty feet from gravel bar; next sounding twenty feet out, no bottom; it is three hundred and nineteen feet from point of gravel bar to the bluff bank on this side of the river; navigable water is water deep enough to float any boat that runs in that section of the country.

HIRAM FINCH, sworn.

I reside in Ft. Madison; have been off the river for a year. Was a mate on Upper Mississippi for sixteen years; for eight years I ran from Keokuk and Montrose to Davenport, and four years simply from Ft. Madison to Davenport; was acquainted with the river where it runs around the gravel bar at French creek; have seen the pier at Atlee's mill; when the river passes around the point of that gravel bar at mouth of French Creek, the channel strikes quartering across to the Illinois shore or Island;

have run boats from thirty to seventy-five yards outside of the upper pier; anything in the river is an obstruction to navigation; there are rafts lying there during all the season of navigation; think I have passed there when the logs extended as far if not farther into the river than the pier is.

CROSS EXAMINATION.

Rafts at Atlee's have varied in size; have seen rafts lying under gravel bar at different times; never was a pilot; have run by the pier many times within thirty to seventy-five yards and found plenty of water; there is water enough to run close to the pier; there is a sand bar to the lef of the channel; think channel is four hundred feet or more opposite the pier.

F. KIEL, sworn.

I reside in Ft Madison; have resided there since 1840; have lived in a house on the bank of Missi-sippi river, with a street between me and the river, a block and a half above the mouth of French Creek, since 1850; can see about two miles down the river; have a full view of the gravel bar at the mouth of French Creek and of Atlee's Piers from front door; right above the bar they run over to the Illinois shore quartering; have no idea how near boats run to pier, but they run a good distance from it; if a boat wants to get to the pier they will have to turn around the bar and come into the shore, at present stage of water; have seen rafts lying in front of Atlee's mill since piers were erected; have seen rafts extend farther out than the piers; have never seen a boat use the place where piers now stand as a channel.

CROSS EXAMINATION.

I am a liquor dealer and rectifier. Have never been a steam-

boatman. Think I live one thousand five hundred to two thousand feet from the upper pier. Boats have crossed right above the gravel bar from said bar to Illinois shore, since my recollection. Boats might run where piers now are but only in high water; have seen packets land there, they run around that bar; sometimes large and sometimes small rafts are there; sometimes he does not have many logs there in the spring.

RE-DIRECT EXAMINATION.

Boats pass down quartering to the Illinois shore after they leave the point of the gravel bar.

F. TAMME, sworn.

Am a butcher; reside in Ft. Madison, and have lived here for twenty years; lived in 1853–'4–'5 just beyond Atlee's mill land; rented a pasture field of Hon. Ed. Johnstone, where mill now stands; was down by the river where Atlee's mill stands very often, when I had that ground for pasture field seventeen or eighteen years ago; the bank in front of Atlee's mill is not the same now as then; ten or fifteen feet from where that upper pier stands the bank was, and my fence was there; the bank and rails were washed away by river.

CROSS EXAMINATION.

A little of the land was washed away while Johnstone owned it, but most of it washed away since Mr. Atlee owned it; not much washed away while Johnstone owned it; could not tell certainly how many feet were washed away, but I think one hundred feet; it washed away a couple of years ago. Mr. Atlee tended to it to keep it from washing; water is middling strong there.

JOHN SCOTT, sworn.

I am fifty-seven years old, reside in Ft. Madison and have lived there since 1847; am carpenter by trade but have been night watch at Atlee's mill since 1871; have been acquainted with ground where mill stands since I came here; think I could walk seventy-five feet farther out on ground in front of Atlee's mill when I first came here, than I can now; think seventy-five feet or more have washed out; worked two years in planing mill at Atlee's mill before I became night watchman; have noticed how near boats pass to the piers at Atlee's mill; have noticed boats passing during night watches; think they usually pass one hundred to one hundred and fifty yards out from upper pier; boats run differently; boats that run out one hundred and fifty yards, run nearly straight from the gravel point down the river; some boats run nearer the pier; as a general thing rafts have been lying there in the navigable season of the year; have seen boats run within one hundred yards of the pier and might be less; within half an hour saw a barge that they said struck the pier; did not see her strike the pier; when I saw her she was not sunk; was under the guard of steam boat; was not nearer the barge than three hundred feet.

CROSS EXAMINATION.

Am generally at the mill from half past four in the morning; some of the ground was washed away prior to 1859 and some since; it has been washing away for the last three or four years; don't know that any more ground washed away when Johnstone owned the land than has since; stated once that I was not a good judge of distance on water; have seen the wind blow rafts in so strong that they would graze the pier; can not say that I have seen any difference in the distance that boats going up and those coming

down pass the pier; as a general thing when boats pass French Creek, they run straight down as the river runs; have seen boats land just above and below the mill, but never saw them land exactly in front of the mill; don't think I have seen boats land between where upper pier stands and the shore, except their own boat; on the inside the depth of water around pier varies from five to seven feet, in ordinary stage of water; some rafts are ten string, some twelve and some thirteen; at time of accident there were only a few loose logs there; barge sank just below the lower pier.

RE-DIRECT EXAMINATION.

Can not tell the channel of the river; boats from the point of the gravel bar run straight down by the piers one hundred to one hundred and fifty yards out; it goes down by the Pork House and crosses over towards the Island; suppose Pork House is four hundred or five hundred yards below lower pier.

PETER O. KELL, sworn.

I reside in Ft. Madison, have resided there thirteen years, except three years I was in the naval department of the army and two years in Minnesota; the balance of said period, except one year, I worked at Atlee's mill; my work has been attending to saw logs and assisting in running the mill; have general supervision of logs; we have from one to two rafts lying between the piers most of the time; we have a raft above the pier and sometimes below; we have logs lying on sand bar at mouth of creek sometimes; the widest raft that comes down is two hundred feet; the narrowest would be one hundred and sixty-five feet; either of these rafts at an ordinary stage of the river will extend out ninety feet from the pier. Two hundred feet of water is needed in

front—is needed for rafts. A mill of the size of Atlee's could not be safely and properly carried on without a boom and water frontage. A boom cannot be constructed in front of Atlee's mill without the assistance of piers. Boats usually pass from one hundred to one hundred and fifty yards outside of pier. Have noticed the course of boats after leaving the gravel point at the mouth of French Creek; when they round the point they go quartering down the river toward the Island on the Illinois shore.

CROSS EXAMINATION.

Boats do not vary their course materially in different stages of water. Have not been a pilot on this river. Water is usually lowest in Mississippi river in July and August. It is high water about five months of navigation. Have seen rafts graze piers but never strike them. Have had a number of rafts extending beyond the pier the summer. Should think the water was ten or twelve feet opposite the upper pier. Rafts in front of the mill extend out that far, for ten or twelve days at a time. It takes us that long to work them up. I am still in the employ of respondent.

RE-DIRECT EXAMINATION.

I know that a barge with a hole knocked into her and filled with water will float if there is no freight on her.

Respondent files copy of deed from John C. Atlee to Samuel J. Atlee, conveying to the latter thirty acres of ground, being the ground on which the mill stands, also other deeds as shown by the record.

SAMUEL ATLEE, sworn.

Am respondent in this suit. Am the grantee in deed from John

C. Atlee, a copy of which is filed in this case. Since copy was filed, original has been found and can be produced if desired. (Production of original deed waved by Libellant.) We own the shore about seven hundred feet up the river to the Half Breed line. We own the shore for about half a mile in front, above and below our mill and have had the possession and use of the same for about ten years. Our first mill was erected there in 1854 or 1855, and we now have three mills in operation; one we do not run. We have about one hundred and ten persons in our employ about those mills. We erected the piers to fasten a boom to and keep rafts from floating down the river. Without the pier our rafts are liable to go adrift in time of a storm. Piers being the only secure way of fastening rafts to the river. When we have a full stock of logs our rafts usually extend outside of the pier about eighty feet. These rafts have been lying in front of our mills for about sixteen years, except in the winter season. When we first started our mill, we found large rock or boulders, some of them was as large as four by six feet, a portion of which we removed by burying them in the ground. They were scattered along the shore, from ten to thirty feet from the bluff bank. I have spent all my time at said mills, during business days, for five years past, except about two weeks in January, 1865. I have noticed the route of steamboats for the last twelve or fifteen years in front of our mill. In low water they pass in quarterly direction to the Island on the Illinois shore, from two hundred to three hundred feet outside of the upper pier, and in high water they usually pass down the middle of the stream, passing usually outside the gravel bar. The upper end of our boom extends about one thousand eight hundred feet above the upper pier. The largest rafts are about four hundred feet long. About one hundred feet outside the pier, is the nearest I ever saw a boat run to that upper pier, when under headway.

CROSS EXAMINATION.

To-day, at ten o'clock, our rafts extend out sixteen feet beyond the upper pier. A new raft has been put in there yesterday or to-day. It has not been five or six weeks before to-day since our rafts extended beyond the upper pier. We get in a raft every week and some weeks two. Generally keep rafts there from the opening of navigation. I once saw the stern end of a raft strike our log raft, knock our logs loose, pass on down the river and strike the corner of the pier. It was in the spring of 1871. The boulders spoken of were all along the shore, in the water and out of it. We had no pier before the present one. The pile of rocks were put there in 1869–70. I have never been a pilot.

GEORGE ANDERSON, recalled.

If Libellant had floated the Jack Reaney to Montrose immediately after the accident, I think about two weeks would have been a reasonable time within which to repair her with the force I generally have there.

CROSS EXAMINATION.

I mean after she was taken to Montrose. I went aboard the barge and looked at her while they were finishing her up, at Montrose. My idea of the time required to repair her, is derived from what I saw when they were finishing her repairs. My opinion is that I could have done it in a shorter time; I set the longest time it would take. There were some repairs before she was taken to Montrose. I saw pretty much all that was done to her. I am unable to describe minutely just what injuries the barge received.

My estimate of the time required to repair the barge does embrace the covering and dunnage of the barge. I am only at a loss to know whether I could have completed the covering, it being in

such a shape that it could not be put in until the other repairs were all done or nearly so. The repairs put on her at Montrose was principally corking and deck work. That is all I know of it.

RE-DIRECT EXAMINATION.

The break was repaired and she was corked above high water before she was removed to Montrose.

RE-CROSS EXAMINATION.

There was no absolute necessity for removing roof of barge in order to make repairs. If the barge was broken nearly in two, her seams sprung apart for nearly fifty feet, her deck, bottom and side stove in, she would have required corking all over. I guess the barge had been in the water just below Atlee's mill for about three months before she was taken to Montrose. I saw her when they were raising her at Ft. Madison. She was in bad shape, was crooked and they had not straightened her.

B. F. ANDERSON, recalled.

If the Jack Reaney had been floated down to Montrose immediately after the accident, she could have been repaired by seven or eight men in seven or eight days, and lumber, materials, work, &c., would have cost near five hundred dollars, perhaps more. I think they corked the whole barge. There was corking done besides the breakage.

CROSS EXAMINATION.

I worked on the barge eighteen or twenty days at Ft. Madison. I have not seen that barge for over a year. I can recollect pretty much all the repairs that were required. Don't know what repairs were made at Montrose. My estimate does not include hog chain and cargo box.

WILLIAM A. GRIFFEY, sworn.

Reside in Montrose, Iowa. Am fifty-six years of age. Am a pilot from St. Louis to St. Paul. Began as a pilot in 1836. Running lumber from Dubuque to St. Louis, commenced piloting steamboats about 1851. Have been piloting off and on. Got a license in 1852. There has been but one year but what I have made more or less trips up and down river. Know pier at Atlee's mill, have piloted boats past it night and day. Saw rock pile there but can't say who put it there. Am acquainted with gravel bar. If you run a log or raft wide enough to pass the point it will run a hundred yards from the upper pier, unless you pull it in. The point sets the current out; the reason why, is that it is a back action of the water after it strikes against the gravel point. Don't consider that the pier is in the channel or in the way of any steamboats or rafts properly managed. With a raft there would be no danger except when drawn in by wind. Steamboat had full control of itself, and had no excuse for running into the pier. Steamboats run not less than two hundred feet from pier, in low water; in high water you could run two hundred or three hundred yards to the left of it if you wanted to. In low or ordinary stage, the water after it passes the gravel point straight from the gravel point toward the Illinois shore for about half a mile, until it strikes the point of a bar on the left hand side then closes toward the Illinois shore, then crosses under the bigh bar to the Iowa shore. Steamers passing within two hundred feet and upwards of pier are in as good water as I know of. There is about five hundred or six hundred feet of width of good water there from that pier out to the bar. Steamers generally run two hundred feet and upwards from pier. Have not seen or been on any steamboats or rafts that run in close enough to interfere with those points where the piers now are. Should think

rafts would extend from forty to sixty feet beyond the pier; it depends on the size of the raft and the heighth of water. Have seen rafts when they extended forty or fifty feet beyond pier. A barge with side smashed in and no load in her would float level with the river in deep water. Sank a barge once myself with a load in her and she floated. Don't think it is really necessary to have lights on piers; it may be a convenience to some men.

CROSS EXAMINATION.

Never ran over the gravel point. There is a difference of from seven to ten feet in the rise of the river. There is, sometimes, a greater difference than that. There is about two-thirds of the gravel bar covered at the present stage of water; said bar is flat near the shore and runs to a point; it is no higher at the point than at the shore. The river is now about two feet above low water. There is a sand bar about five hundred feet from gravel bar; it is about the same distance from the pier. At low water there is not over two feet of water on said bar; the bar would only have a tendency to stop a boat coming down river, would make her run slow if she was a stern wheel boat. Some boats will run away from bar and some would run on to it. There is good water up to the bar, opposite the pier. Water is deep enough to run where piers stand in low water if it were not for boulders in there; we were always posted to keep away from that point and give it a wide berth. A barge lashed to the side of a boat is always expected to pull off some. In high water boats vary their course a good deal; you go down about half a mile from the piers in middle of river and then cross-over to the Illinois shore and then back to the Iowa shore under the big bars as I have said before. Shore begins to bend about Atlee's lower mill and continues to bend until it comes to head of Hastel slough;

Iowa shore makes a sharp point at lower pier, not so sharp now as before; think twenty yards have washed in. Channel commences to cross toward Illinois shore at gravel point; said point would stand off the water same as any other point; sometimes there are very few logs at his mill, and sometimes a great many. Have helped land rafts both above and below the mill. Rafts generally keep lights, sometimes not; only keep lights for reason of having other rafts and boats run into them. Have a license as pilot now; made last trip June 1st, on Latrona; have piloted for no line; have been on river since 1852, with exception of one year.

RE-DIRECT EXAMINATION.

In a stage of water that would allow boats to pass over the gravel bar, they could run anywhere, as gravel bar is higher than other bars.

C. PYLE, sworn.

Am thirty-seven years of age. Am a saw mill man. Reside at Ft. Madison. Have been ten years in the employ of respondents and am required to be at the mill nine months of the year. Rafts lay in front of Atlee's mill at least eight months every year. A nine string raft, when lodged against the bank, in an ordinary stage of water, will project four strings out in the river beyond the pier. I have observed nearly all the boats that have passed the mill in day time. They generally run from seventy-five to three hundred feet from the upper pier. I have never seen in the ten years I have been there, a boat pass where the upper pier is located, although my occupation has been right at that end of the mill, where I could see all passing boats. I cannot swear that boats never passed nearer the pier than seventy-five feet, I never saw them pass nearer. My duties do not keep me at the mill during the night.

CHARLEY P. BEARD, sworn.

Am thirty-one years old. Occupation is that of raft pilot and boat pilot for small boats. Reside in Minnesota. Have not been licensed on this river but was on Chippewa river. Have had nine years experience as pilot between Reeds Landing and St. Louis. Have been in constant employment; constantly for nine seasons; with exception of last three seasons I have floated rafts. Have full knowledge of piers at Atlee's and water inside and out. Ordinarily run from one hundred to two hundred feet from pier. Have a knowledge of gravel bar. Immediately after passing said bar, water runs very near with the bank of river and gradually sets across to the Illinois shore. The channel between pier and bar on left side is about six hundred feet. Piers are no obstruction to navigation as I can see. A person can make the bank an obstruction if he chooses to run out of channel.

CROSS EXAMINATION.

Have never known of rafts striking on piers. Last summer I struck gravel bar and raft swung half way round. I cross-pulled raft and got out without hitting pier. At a high stage of water rafts can run over gravel bar. There is a deep bend in Iowa shore, a little distance above gravel bar. Cannot say that bank bends in from bend above to lower pier. Bank is all point from gravel bar down to lower pier. If wind were blowing strongly into Iowa shore, pier might be an obstruction. The wind will blow a raft or floating craft out of channel. If wind should blow raft in, the piers would make it more dangerous for rafts. Boats make crossing towards Illinois shore from about the lower pier. Water is about sixteen feet deep on outside of upper pier. There is about fourteen feet of current on inside. Have not seen boats pass within one hundred and fifty feet of pier. Have seen boats pass there

often. Rafts vary their course in many cases when water is high. At Ft. Madison they run in the middle of the river in high water and in low water they run in the bend. Have run fifteen or eighteen rafts past the pier. Have piloted steamboats past them. floating rafts generally tie up when it is dangerous to run. If floating raft could be held out of bend there would be no danger of running into the pier.

WM. A. DUSTIN, sworn.

Am forty-five years of age, and am raft and steamboat pilot. Was licensed in 1857, and again in 1862. Have been piloting ten years, four and a half months being the least in any season. I have passed this point (Ft. Madison) from seven to ten times during my piloting. Previous the time I have been running rafts to St. Louis or points above. Have floated rafts past here about four times a season for twelve seasons. I have seen the piers at Atlee's mill and know where they are located. Everything in the river is an obstruction. I don't consider the piers any bad obstruction to navigation.

CROSS EXAMINATION.

I am now piloting on steamer Rogers. She is at present a raft boat. I principally pilot passenger boats from La Crosse to Eu-Clair, in Chippewa river, Wisconsin. For the last few years have piloted boats from the neighborhood of Galena, up the Mississippi. I once piloted the Minnesota past the upper pier since it was built. During the last ten years I have piloted boats past Ft. Madison, somewhere in the neighborhood of from seven to ten times.

P. COLE, sworn.

Am fifty-five years old and a carpenter. Reside at Ft. Madison and for last nine years have worked for Atlee at his mills. I

came to Ft. Madison in the spring of 1838, and have resided here ever since. The universal custom of respondent has been to keep his logs where the upper pier now stands, before and since the pier was built. The rafts often extend out beyond the upper pier. At this time there are, I judge, twelve strings of small logs in the boom, and the raft extends a little over six strings beyond the pier into the river. The present stage of water is low but not the lowest. As a general thing steamers run at least one hundred feet outside of where the rafts now stands. They may, sometimes, come nearer, but seldom. I do not think I ever saw a steamer, during the nine or ten years of my employment at Atlee's mills, run over the point where the upper pier now stands, prior to its erection.

CROSS EXAMINATION.

Am now in respondent's employ. Have never been a pilot or steamboatman. Have run a ferry boat at this point and frequently run her to Montrose, Nauvoo, &c. Rafts in front of mill get smaller as Atlee uses off of them. Rafts are not generally kept between the pier and the mill, but above the pier. There is just about room enough below the gravel bar and above the pier for a raft. It is most of the time open water between the pier and the mill. Occasionally when he has a raft of logs he wishes to save, he puts them between the two piers. Atlee got a nine string in last night. I think there were about three string of logs lying there last night. I think the pier is not below the big mill; that is my opinion. At present none of the gravel bar above the pier is covered with water, except the point of it which runs away out into the river. With one exception, I don't think I have ever seen a steamboat run nearer than within one hundred feet of the pier. That exception was the other day, when the North Western, with

a barge in tow, was coming up, there was a ten string raft of lumber going down and the boat passed between the raft and the pier. I think she was nearer than within one hundred feet of the pier. I don't recollect of ever seeing but one raft graze the pier. Never saw any boats land inside of the pier except little raft boats that come there to take in pine wood. I am kind of superintendent about the mill. I don't know as I am a proper judge of the channel. I guess there is a current from the pier to the Island. The current verges from the gravel bar towards the Island from the Iowa shore. I would say not very much until it gets about opposite the lower pier.

RE-DIRECT EXAMINATION.

When the raft I speak of grazed the pier, there was quite a brisk east wind blowing toward the Iowa shore. I would be safe in saying I have probably seen over one thousand rafts pass that pier, in all kinds of weather. There was one raft struck the gravel bar last summer. Mr. Samuel Atlee and myself went down on the log raft in front of the mill. They swung the hind end of the raft out into the stream and that threw their raft off from the bar, and the forward end of it went into Mr. Atlee's logs and boom. After we got them separated the raft floated down and missed the pier at least ten feet.

RE-CROSS EXAMINATION.

At that time there was what we call low water. The rafting season averages about seven or eight months of the year.

JAMES BEST, sworn.

Am thirty-five years old. Am steamboat mate. Live at Montrose, Iowa, have been engaged in steamboating for past twelve years between St. Louis and St. Paul. Was on board steamer

came to Ft. Madison in the spring of 1838, and have resided here ever since. The universal custom of respondent has been to keep his logs where the upper pier now stands, before and since the pier was built. The rafts often extend out beyond the upper pier. At this time there are, I judge, twelve strings of small logs in the boom, and the raft extends a little over six strings beyond the pier into the river. The present stage of water is low but not the lowest. As a general thing steamers run at least one hundred feet outside of where the rafts now stands. They may, sometimes, come nearer, but seldom. I do not think I ever saw a steamer, during the nine or ten years of my employment at Atlee's mills, run over the point where the upper pier now stands, prior to its erection.

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a barge in tow, was coming up, there was a ten string raft of lumber going down and the boat passed between the raft and the pier. I think she was nearer than within one hundred feet of the pier. I don't recollect of ever seeing but one raft graze the pier. Never saw any boats land inside of the pier except little raft boats that come there to take in pine wood. I am kind of superintendent about the mill. I don't know as I am a proper judge of the channel. I guess there is a current from the pier to the Island. The current verges from the gravel bar towards the Island from the Iowa shore. I would say not very much until it gets about opposite the lower pier.

RE-DIRECT EXAMINATION.

When the raft I speak of grazed the pier, there was quite a brisk east wind blowing toward the Iowa shore. I would be safe in saying I have probably seen over one thousand rafts pass that pier, in all kinds of weather. There was one raft struck the gravel bar last summer. Mr. Samuel Atlee and myself went down on the log raft in front of the mill. They swung the hind end of the raft out into the stream and that threw their raft off from the bar, and the forward end of it went into Mr. Atlee's logs and boom. After we got them separated the raft floated down and missed the pier at least ten feet.

RE-CROSS EXAMINATION.

At that time there was what we call low water. The rafting season averages about seven or eight months of the year.

JAMES BEST, sworn.

Am thirty-five years old. Am steamboat mate. Live at Montrose, Iowa, have been engaged in steamboating for past twelve years between St. Louis and St. Paul. Was on board steamer

Phil Sheridan, on 23d April, 1871, as first mate. Steamer sank a barge on pier opposite Atlee's mill. Accident occurred in fore part of night. Believe the weather was good, perhaps a little windy, can't say whether it was starlight or not. When I got on deck, barge was just sinking. Don't know how much barge was injured; break was under water; think roof of barge was all right until we broke it with fender of steamer. Think steamers do not generally run nearer than seventy-five to one hundred feet from pier; should think that said piers are no obstruction in ordinary stage of water.

CROSS EXAMINATION.

Left the river June 20th, 1871. We light over the rapids, sometimes when there is five feet on rapids; some boats draw more than five feet when loaded. Sheridan draws over four feet loaded but less than four light. When steamboat came alongside of barge after barge was loaded the forward fender of steamer broke the cargo box or roof. This was, I think, on the opposite side of the break in barge; should say this break was unavoidable; it might have been avoided by taking up fender. Were all busy at the time and doing what we could with the barge.

THOMAS W. WRIGHT, sworn.

My age is thirty-six years; live in Ft. Madison, Iowa; have lived there since 1851, and have been a practical engineer on steamboat since that time. Engineered the ferry boat at Ft. Madison three or four years. Have engineered boats from La-Crosse to St. Paul; between Rock Island and Ft. Madison and other places. Have seen pier at Atlee's mill; think pier stands between five and eight feet above water; never measured it. Pier can be seen in daylight going up and down the river in the steam-

boat channel of the river; have known channel in front of Atlee's mill for twelve or fifteen years; have noticed it more particularly since pier was built than before. Know of delta or bar formed by mouth of French Creek. The channel strikes the bar and descends angling from the Iowa shore to Illinois shore. Can't say how far delta or bar extends into the river; can not say whether it extends farther out than the piers or not. At the present stage of water the channel may be from twenty-five to seventy-five yards from the pier, but certainly twenty-five yards. Channel in front of pier is probably two hundred yards wide. At present stage of water we generally run within from thirty to fifty yards of pier. Water is low stage now. Would not like to say whether the pier is an obstruction or not. You can hit it or you can run to the side of it. The pier is used to fasten a boom to, to secure logs at Atlee's mill. There are other piers along the river for booms for saw mills. Some of the rafts of Atlee's have projected out farther into the river than the pier.

CROSS EXAMINATION.

Have not now and never have had a license as steamboat pilot. When on duty my post is in the engine room. At high stage of water since piers were built have seen water run over piers; saw it run over two years ago. In a dark night piers could not be seen as far as in a light one. Never saw a light on piers prior to accident; but have seen it since. At an ordinary stage of water boats can run up to and land where piers are, on outside. When there was two or three feet more of water than now, we have landed at the shore between the piers, with steamer "Wm. White," a raft boat. Water was high then. When the water was low we landed between the two piers and took on wood off and on during the summer. Below the upper pier are what are called "Nigger heads," they are situated between the piers; knew it because we

had to spar off the rocks in "Wm. White." Think I have seen lights on rafts at Atlee's. At time of accident to the barge occurred there was nothing to prevent boats coming down the current to where the piers are that I know of. On April 23d, when water was high boats could run over bar extending out from French Creek. Never knew boats to pass nearer to the piers than twenty-five yards. Do not claim to be a pilot. There are mill piers at Burlington, Alma, Lyons, Clinton, Rock Island and Davenport. Do not know how they stand with reference to channel. Samuel Atlee is my brother-in-law.

MILES A. PENDON, sworn.

My age is thirty-nine years, and live in Montrose, Iowa, and have lived in Ft. Madison. I followed piloting in Ft. Madison, on the Jennie Whipple, Keithsburg, Muscatine and others. Have had a license for piloting, and now have one. Am well acquainted with the channel about Atlee's mill. There is a gravel bar at the mouth of creek above Atlee's mill. In running down we neared the bend above the gravel bar, when we get to the gravel bar, our boat should lay headed outside the upper pier, then we run until we get abreast of the upper pier, or a little below it, then we head straight down the middle of the river. We can run close to the pier and keep about two hundred feet from it. It is good water from pier to the bluff bar, but I cannot say that water is good from pier to the island. Have frequently seen rafts when the piers and before the piers were built, and think I have seen rafts standing out into the river as far as the piers, and sometimes farther. That water seems good where the pier stands. The upper pier can be seen four or five miles up the river, and two miles down the river, in day time. Saw the Jack Reaney the next day or two after the injury. My idea is that pier stood four or five feet

above water at the time of the accident. When it stood four or five feet above water it could be seen about the same distance, as in bar water, I think the gravel bar was high enough to let the Sheridan run over it about the time of the accident. When I saw the barge it was run up on shore. The other end was in the water. A pilot that has been licensed as long as Mr. Gall, is supposed to be safe and competent at all times. If a pilot has been off the river for two years, he can run as well after when water is high, but not so well when water is low. Not when river is low enough to hit bars. If a pilot had been off the river, and owners of saw mills had built piers or booms along shore or along the edge of the channel, without the knowledge of said pilot, he would be competent to run if signals were on piers. If not, he would be more liable to hit them.

CROSS EXAMINATION.

Descending boats running the bend and passing the pier vary the distance from the pier according to the number of barges they had. A boat with four barges, two on each side, would have to pass within fifty yards of the pier, which is about as far away as they could get. They ordinarily pass closely. The reef or sand bar is near three hundred feet from pier. It does not cause boats to flank in low water. In high water boat will flank towards piers. Pier was constructed in the winters of 1870 and 1871. Most always passed pier in night. Never saw any lights that I recollect of. Some nights you could see pier five hundred yards, and other nights you could not see it four boat lengths. Could not see it very far on an ordinary hazy moonless night. There was nothing there previous to accident to give notice of danger to pilots who did not know the pier. Pier stands pretty close to navigable channel. Have landed directly above said piers, so that I think stern

of boat was against it. Won't be positive. Have run over the place where piers stand, but it was in high water. If pier were removed, boats could pass over the place where it now stands with water above ordinary stage. Don't see how said pier can constitute any thing but an obstruction. There are times under certain circumstances when it is liable to sink boats and barges. If wind were blowing toward Iowa shore, it would have a tendency to blow a descending boat on pier. It would be less dangerous if pier were not there.

RE-DIRECT EXAMINATION.

Should consider rafts that I have seen lying at the mill, obstructions to navigation. If a barge should collide against a raft of heavy logs, the danger from such collision would depend upon circumstances. Don't remember that I have ever known a boat or barge injured by collision with raft. If the Jack Reaney had collided with a raft of heavy logs, instead of a pier, it would probably not have hurt her much. Am not employed by any one.

RE-CROSS EXAMINATION.

Rafts moored at the shore or at mills almost invariably have lights on them.

E. H. WORRALL, sworn:

Am thirty three years of age. Occupation is that of civil engineer. Am employed by the government of the United States as a civil engineer, on the Des Moines Rapids of the Mississippi River, in the construction of the improvement of said rapids.—Made a survey last March, of a portion of west bank of river in front of Atlee's mill. Col J. A. McDowell of Keokuk, a civil engineer also, was with me. Major Burnham, Michael Costello, and

Mr. Samuel Atlee, were with us and assisted us. We surveyed particularly the delta at mouth of French creek. The upper pier stands angling with the bank of river. The upper corner is one hundred and twenty seven feet from the bank, and the lower corner one hundred and twenty four feet from bank. Width of pier twenty two feet at both ends. Pier is twenty nine feet long.—Pier thirteen feet above water at time of survey. Water inside of pier is 7 4–10 feet in one place at upper inside corner and lower inside corner is eight feet. At upper outside corner is twelve feet deep. At lower outside corner water is 10 7–10 feet. Ten feet outside outer edge of pier is sixteen feet in one place upper end, and fourteen feet at lower end. Thirty feet from pier we found no bottom with a twenty foot sounding pole. Right opposite the pier the bank is a bluff with a slope of about one to one. Bank is about four and a half to five feet above the slope of the river shore. I speak of the measure of height of bank from memory. From upper corner opposite to shore seventy seven feet. From lower corner to shore seventy four feet. Made a diagram of survey, (see map) and file it with my deposition. The delta or gravel bar at mouth of French creek extends from bank three hundred and forty one feet. Thirty feet out from gravelly point we found fourteen feet of water. We found the channel so strong that we could go no farther. The ice was running thick in the river. Our measurements not simply to surface of water, and we then rowed out thirty feet and found fourteen feet of water. It was a gradual slope from the surface of water out that distance. The shore side of channel is twenty feet out in river from upper pier. That line is marked to show the inside or nearest side of channel to shore. The cross sections or blue lines running parallel to each other, and at right angles to the end or base line running from bluff bank to the broken line on which is written "shore side of

channel," show surface of water at time of survey, at each point when taken. The irregular black lines crossing the blue ones are intended to show the surface of the ground with reference to the plane of the elevation or stage of water at the time of the survey. They show the shape or slope of the shore from the bluff bank to the edge of the water and the bottom of the river from the edge of the shore to the edge of the channel. Near where the upper pier stands, there is a gradual rise from the shore side of the channel, until you get to the waters edge on this shore. The figures fourteen, fifteen, sixteen, &c., along the line which marks the shore side of the channel, indicates the depth of water at that distance from shore, at time of survey. It is impossible to show actual measurement of survey on paper, with reference to the actual space. Consequently we reduce our measurement from feet to inches. In this diagram one hundred feet of actual measurement is measured by cne inch of actual measurement in the diagram. The dark shaded lines in black represent the continuation of bluff bank of river. The broad shaded blue line shows the shore of river at time of survey. It shows the edge of the water at that time. The broken line marked "shore side of channel," is to indicate as permanently as possible the deep navigable water of the channel of the river above, opposite and below Atlee's mill.

CROSS EXAMINATION.

Have never been a pilot on the Mississippi river. The term channel is a technical phrase among civil engineers to indicate the deepest water, and of course navigable passage of a river. Can't answer as to pilots. The line marked "shore line of channel," indicates the deepest water found within the limits of survey.—Have reason to believe that that line does not represent the center of navigable channel. We sounded thirty feet from upper

pier with a twenty foot pole, and found no bottom. Consequently the inside edge of that channel, as represented, does not show the deepest water. Made soundings beyond that line besides that one opposite, but none is recorded. Five feet in depth is navigable water. Take my authority from government instructions in regard to work I am at present upon. There was navigable water at some places inside the line marked "shore side of channel," with reference to depth, but not with reference to current. The line of current above the delta of French creek, strikes obliquely against said delta, and is turned to the left gradually towards the Illinois shore. A boat following that current would continually keep in deep water. I speak of the current being thrown off from the delta towards the Illinois shore, from observations during the survey of that particular locality, and considerable experience of the effects of bars, currents and shoals, not only in the Mississippi river, but in other rivers of the United States. At the height of water which prevailed at time of survey, the surface of the delta out beyond the head or base line of survey, was two feet above water on an average. The delta is almost perfectly flat. A rise of about two and a half feet would cover the delta entirely. If the water had been at such a stage the surface was five feet from top of pier, there would have been six feet on top of delta. The base line was run on the shore. Part of measurements were made on land and part on ice, and some in a boat, great care being taken with all measurements taken in boat. Soundings for bottom were made, some through the ice and some from the boat. Can't be positive what were made in boat and what on the ice. From information from reliable parties, the water was then two feet above low water mark. The low water mark indicated to me was a spike driven into the pier, which was two feet below the surface of the water. Bars, such as the one two hundred to three-

hundred or four hundred feet from and opposite the delta, are only formed, or are nearly always formed during the high stages of the river when the current naturally seeks the deepest channel.—Consequently in their shape and direction they follow the course of that current, and except in extreme low water where the surface is exposed or very near the top of the water, they do not affect the general course of the current. The delta is caused by the earth, sand and gravel brought down by French creek. When the water at Ft. Madison falls to an ordinary or low stage, so that the volume of the river flows within the navigable channel with the current sweeping into the bend above the delta, this would, to a certain extent, have the effect to shorten or cut off the point of the delta, but the delta of French creek is composed to a large extent of heavy gravel of itself, and is protected by the heavy rip rap embankment of the Chicago, Burlington and Quincy Railroad, above the delta which directs the course, and arrests the force of the current. I have made no measurement or survey of the delta since steamboats began to run in season of 1872, nor did I make any in 1871. I marked the broken line "the shore line of channel," to indicate the inside edge of the channel or navigable part of the stream. I drew that line myself, without any suggestion from any person or persons whomsoever, knowing from my experience of bottoms of rivers, that navigation must be done in deep water, and deeper than we found it at the pier, and also from the general head of the current at the place indicated. I don't know the draft of the Phil Sheridan at all. If she was drawing five feet there was depth of water enough at the time I made the survey for her to have passed over the place where the upper pier stood if it had been entirely removed. If there had been six feet of water over the delta at time of accident and the "Sheridan" had been drawing but five. she could have passed over

the delta. With six feet of water over the delta the distance from the pier to the shore would be a little over one hundred feet.

RE-DIRECT EXAMINATION.

If we suppose the current of the river naturally presses against the Fort Madison shore until it strikes the delta at mouth of French creek, the effect of the delta on the current would be an eddy created behind the delta caused by the divergence of the current, and the current could not overcome that divergence unless it was very swift in, I should say eight hundred or a thousand feet. The current, on account of the delta, would, at the stage at which the survey was taken, draw away from the pier.

DANIEL E. MERIAN, sworn:

My age is 51 years; residence Quincy, Ill; my present business lumber dealer. Was a pilot on lumber rafts on Mississippi from 1854 to 1860, and piloted one raft in 1865. I was acquainted with the channel of the river at Atlee's mills at the time I was running as pilot, and have been on the river since, and think I know the channel. From the outside of the gravel bar the channel runs nearly east toward the Illinois shore about half way across the channel, then runs south. Channel, at time I run as pilot, was about three hundred feet from the pier, but boats ran all the way from two hundred to five hundred feet from it. I consider Atlees' pier no obstruction to navigation.

CROSS EXAMINATION.

I am not a steamboat pilot. I piloted past Fort Madison the last time in 1865. The water where the upper pier stands is about twelve feet deep I think in high water; at low water about two

and a half to three feet; at an ordinary stage about four and a half to five feet. There was a sand bar in the river above the pier about one half mile and away above the gravel bar and on the opposite side next the Island shore. Boats should pass the upper pier at least two hundred and fifty feet from it, and run out from gravel bar toward the Illinois shore.

BRIEF OF COUNSEL FOR APPELLANT.

We shall endeavor to maintain three propositions, either one of which being established, the decree below must be reversed. They are as follows:

1. That the structure on which libellant's barge collided is not within the ordinary navigable channel of the river, and therefore not a nuisance.

2. If the said structure extended beyond the line of navigability at any season, it is in the season of high water. It does not extend beyond said line in times of low water, and therefore does no more than to afford the riparian proprietor means of access to the navigable water at all seasons, which is his right, and it is therefore a lawful structure.

3. That the structure being necessary to the enjoyment by respondent of his mill property, it could not be regarded as a nuisance even if it did extend slightly beyond the line of navigability, provided it does not *actually* and *materially* obstruct the navigation of the river.

We will speak of each of these propositions in its order.

I.

The pier is not within the ordinary channel, and therefore not a nuisance. In Yates vs. Milwaukee (10 Wall 497,) it was settled that the owner of land bordering on a navigable river has certain riparian rights, and among them, the right to free access to the navigable part of the

stream, in front of his land, and the right to make a wharf or pier, *extending to the navigable channel.* Under this ruling we maintain that the pier constructed by appellant in front of his land and mills, was lawfully and rightfully constructed.

We submit that the terms "navigable channel" or "navigable water," as used in Yates vs. Milwaukee, must be held to mean the *ordinary* navigable channel. It is absurd to say that the rights of the riparian owner extend only to the line of navigability in times of high water.—A rule such as this, would necessarily cut off his access to the main channel during the greater part of the year.—High water exists occasionally only. It would be a mockery to say that the riparian owner has a right to free access to the navigable channel, and that this right is property, and is valuable, (as is said by this court in the case above cited,) and at the same time say to him that this free access can only be afforded him in times of high water, and that during nine tenths of the year while the water is at its ordinary or low stage, he may not enjoy it. In legal acceptation, as well as to the common understanding of men, the navigable channel signifies that portion of the river which is commonly and ordinarily fit for and used for, the purposes of navigation. The channel of the river is one thing, the *navigable* channel is another. There are times of extraordinary high water, when the Mississippi River at Ft. Madison can be safely navigated by large steamers, from bank to bank, a distance of a mile or more, and at many places on said river, at such times, large vessels may go with safety outside of the natural bank and run over the low bottom lands, which in ordinary times are used for purposes of agriculture. It

cannot, however, be seriously claimed that the navigable channel extends to every point which may at any time be reached by a steamer. What then do we mean by these terms, if we do not use them in the sense of designating that portion of the river commonly and generally used as the channel for vessels?

If the navigable channel is held to include all water in the river deep enough to float a vessel, then it must vary with the rise and fall of the water. It will be at one point in high water, at another in ordinary water, and at still another in low water. While this fact shows the impossibility of *fixing* the line permanently, except it be fixed with reference to low water, it also shows the wisdom of the rule for which we contend.

Let us then consider, in the light of the evidence, the question, whether the pier of respondent is *within the navigable* channel—using those terms to signify the usual or ordinary channel of navigation.

About 1854, John Atlee, the father of Appellee, became the owner of some thirty-five acres of land on the west bank of the Mississippi river, adjoining the town of Fort Madison on the west. He purchased the land with the intention of erecting thereon the saw mills, planing mills, and other machinery which exist there now. By 1857, or thereabouts, he had his mills erected and put into active operation; and from that time until now they have been kept in constant operation during each and every season of the year, when rafts of logs could be got, and the weather admitted of sawing, and the running of saw mill machinery. When Atlee, the elder, became the riparian owner, the bank of the river extended into the river about

100 feet farther than it does now. This is proved by the deposition of Tamme, who as tenant of the vendor of the elder Atlee used the premises as pasture land, and was on them several times every week, whilst in charge of them as tenant as aforesaid. Cutting down and removing the timber and bushes from the bank of the river by Atlee, caused the bank to crumble and fall away, and also to be more or less washed away at times of high freshets in the river. The deposition of Scott shows that though he has not known said bank as long nor so well as Tamme, yet he knows the fact that a few years ago, the bank extended some seventy-five feet into the river farther than it does now. The depositions of appellant and the elder Atlee, prove that when a harbor was being prepared in the river in front of the mills, where rafts of logs might be brought and moored for the use of the mills, there were many large rocks or boulders in the water, extending from the water's edge or shore line, in an ordinary stage of water, out about as far, or nearly as far as the upper pier on which Appellant's barge collided, as hereinafter shown; and that it cost much labor and no small expense, to remove the said boulders so as to permit the rafts to be moored close to the bank in front of said mills, so as to be drawn by the steam power of the mills from the river into the mills to be sawed into lumber. Captain Campbell, an old river pilot and steamboat captain and who also ran a steamboat packet from Fort Madison to Davenport many years, corroborates the Atlees in regard to the existence and condition of said boulders.

The depositions of Tamme, Scott, the two Atlees, and of Captain Campbell, were taken at Fort Madison in the presence of J. L. Rice, Esq., one of the Attorney's for

Appellant, and if they had testified erroneously in regard to the old bank of the river in front of the mills, or in regard to the condition of the boulders in the river fifteen or twenty years ago, he could have called all the old residents of Fort Madison before the commission taking the evidence under order of the District Court, to disapprove their statements. And the *fact* that he did not call *one* witness in opposition to them, is clear evidence to our mind, that he had, as a faithful attorney, duly inquired into the facts, and found that the statements of Tamme, Scott, Campbell, and the Atlees were correct.

Having thus shown where the bank of the river formerly was, and where the boulders lay in the river in front of the Atlee mills, we now, naturally, in the course of discussion, come to a point made by Appellee, to-wit, *that steamboats have often run over the place where the pier in front of the Atlee mills stands, and between the pier and the bank.*

The evidence of Worrall, U. S. Engineer in charge in part of the improvements being made by the United States along the Lower Rapids of the Mississippi river, and of Heath, Surveyor, who each made careful surveys of the river bank and water's edge in front of the Atlee mills, proves beyond doubt or question, that if there were boulders in the river, or if the bank extended out formerly as our witnesses, above named, testified, no boat ever did or could have run where said pier now stands, or between where the pier stands and the bank of the river, before the time when Atlee's mill was built, unless in a *very*, very, high stage of water; *because*;

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1 st. The reef of rocks and boulders which laid close to where the pier now stands, and which had to be removed to enable rafts to get to the shore in front of the mill, would, also, have prevented a boat from running where it lay in an ordinary stage of water.

2 d. Before the Atlee mill was erected, the bank of the river, some eight or nine feet high, as shown by said surveys, came so near to where said pier now stands, that there was not room between that place and the bend for an ordinarily sized boat to have passed, however high the water may have been.

This proposition is then, we think, clearly sustained by the evidence, by evidence of *figures* and *surveys*, in connection with the uncontradicted statements of Tamme, Scott, Campbell, and the Atlees, that no part of the navigable channel of the Mississippi river, did ever run where the pier now stands, or between where the pier stands, and the bank of the river prior to the time of the erection of the Atlee mills. Though we will not deny but that during great rises in the river, boats may have run where said pier stands, before said mill was erected, as they have sometimes run in front of St. Louis, and Burlington, and other places in times of great freshets, for several miles outside of the river, over ground which has been cultivated and amongst tasseled cornstalks.

Next, we claim that it is proved by our witnesses, most respectable and responsible citizens and business men of Fort Madison, that the Atlee mills do now, and ever have since their construction, fifteen or seventeen years ago, done a very large saw-mill business, employing usually a hundred men or more in their management, and for all

that period with scarcely an intermission of a day, have had rafts, some of them two hundred feet in width, and none hardly ever less than seventy-five feet in width laying in the river in front of the Atlee mills, at all those seasons of the year, when rafting of logs is allowable, and saw mills usually run, Or, if it be not true that each year since the Atlee mills were erected, large rafts, or logs, lay in the river constantly during the usual time of running saw-mills along the Mississippi, to-wit: from the opening of navigation in the spring and as soon as logs can be floated from the pineries, until the close of navigation or the approach of winter, why did not Appellee's counsel when before the commission at Ft. Madison, introduce some witnesses or witness, to contradict appellee's witnesses, or their said statements about the rafts? especially as he had a city of 5,000 inhabitants to hunt in for such contradicting witnesses, if they could have been found.

If then the evidence shows that rafts usually from seventy-five to two hundred feet in width, have been laying in front of the Atlee mills during the ordinary times of navigation for the last fifteen or seventeen years how could steamboats run where the pier stands, or between it and the bank, when in fact the rafts crowd all that space?

But to return to the questions in relation to the navigable channel, and its obstruction by the pier of appellant we will, to sustain our view of the case, *first* quote from the evidence of appellee's pilot witnesses, as follows, to-wit:

1. G. W. Duncan. Last question and answer of re-direct examination.

"Q. Where does the upper pier stand with reference to the navigable channel of the river?"

"A. I think it stands on the *edge* of the channel on the Iowa side."

2. Jerome Ruby. "I understand that the pier stands on the *edge* of the channel, on the Iowa side?"

3. Wm. Kelley. Answer to question 5 of libellant. "I have a personal knowledge of those piers. * * They are right at the *edge* of the channel,—the upper one especially."

4. Uriah Brock. Answer to question 5 of libellant. I have a personal knowledge of those piers. * * They are on the *Iowa side* of the channel. The upper one is a little nearer the shore than the lower one."

5. E. V. Holcomb. Answer to question 22 of libellant. "The channel run right along by the piers. They stand in the *right hand edge* of the channel going down stream.'

6. W. R. Slocumb. Answer to question 6 of libellant. "It" (the pier) "stands, I think, on the *right hand side* of the channel going down stream."

7. John F. Gall. Answer to direct question 45. "The upper pier, I do not think affects the navigation of the river coming down stream."

8. O. M. Ruby. "I should judge it" (the pier) "stands on the *side* of the channel."

9. W. J. Garseich testifies. "The channel runs *very close* to these piers.

10. Henry G. Carson testifies. "The channel runs *close* to the piers."

11. Charles Gellaspie testifies. "The upper pier is *pretty close* to the channel."

Here, we have the evidence of eleven of libellant's seventeen or eighteen pilot witnesses, who testify that the pier so obnoxious to libellant, is not in the navigable channel, but on the *edge*, or Iowa *side* of the channel. And it may here be properly further remarked, that though most of the seventeen or eighteen pilot witnesses of libellant, declare they have at some time or other run boats where the pier stands, and that they consider the pier an obstruction, yet many of them and perhaps most of them, admit that *the ordinary route of boats is outside of the pier a considerable distance.* Hence we, also, claim that a portion of libellant's witnesses unite with our witnesses in proving that the ordinary route of vessels is some distance outside of and from the pier. It is true that these witnesses express the *opinion* that the pier is a "nuisance" and "obstruction" to navigation; yet it should be borne in mind that they are but a re-echo of their trade and vocation, which considers the river as only intended for purposes of navigation of vessels, and that it is a crime to erect bridges over it, or to expend any money about it for any purpose else than to clear out sand bars and snags, and give them absolute dominion of its waters from bank to bank.

We now come to witnesses of respondent. Our client does not have fifty pilots under his employment, and not being engaged in the steamboat business, was content so far as pilot and river-men testimony is concerned, to introduce such witnesses of that sort as had their homes in his neighbsrhood. Respondent's river-men testimony, is as follows, to-wit:

I, Wm. A. Griffey, a pilot, residing at Montrose, in Lee county, was engaged as a raft pilot on the Upper Mississippi, from 1836 to 1851; and from 1851 until now, has been a licensed river pilot on the Upper Mississippi. Says he has piloted boats and rafts both night and day hundreds of times past where the pier is located, and knows the location of the piers thoroughly. Knows the gravel bar at the mouth of French Creek, and he has been on it. Says steamers usually pass two hundred feet out from the upper pier; that the channel and current of the river is outside of the pier from the end of the gravel point pointing towards the Illinois shore. Says: "*I don't consider the pier is in the channel.*"

We would request the court to examine this deposition very critically, because Griffey being one of the oldest and best pilots on the Upper Mississippi river, was examined and cross-examined very searchingly before the commissioner at Fort Madison, which we think afforded much better tests of truth than depositions taken on commissions.

A. B. Woodward, C. Baird, and Wm. Dustin, each a river pilot, corroborate the statements of Griffey as to the location of the pier, and its non-interference with the navigable channel.

J. W. Campbell and B. W. Davis, both steamboat captains, and the former one also an old pilot, prove their acquaintance with the place where the pier stands, and show that it is not in the channel, but on the Iowa side of it; that boats usually pass several hundred feet outside of it; and that the current and channel set out from the point of the gravel bar towards the Illinois shore.

Wright, steamboat engineer on the Upper Mississippi river, Morrison and Woodward, raft pilots, Finch, old steamboat mate navigating the Upper Mississippi, and Best, steamboat mate and mate on board of the Sheridan *at the time* when the barge she had in tow collided on the pier, each and all, prove the pier is not in the channel; that the channel is outside of the piers, that the channel passes from the gravel point outside of the pier towards the Illinois shore; and that the usual route of steamboats is outside of the pier some distance.

Next we come to witnesses, who though not river men, yet are old residents of Fort Madison, who for many years have lived near the Atlee mills, and some of them worked at the mills for ten or fifteen years, landing rafts at the mills and handling the logs in the boom in front of the mills.

John Atlee came to Fort Madison in 1837, built the Atlee mills, helped remove the boulders from the river, and has helped run the mills ever since their construction; E. G. Wilson, merchant in Fort Madison, and has resided there since 1837; Ferdinand Kiel has resided in Fort Madison since 1840, and he and his family have resided in a house on the bank of the river since 1850, and within two blocks of lots of the gravel point at the mouth of French Creek; John Scott came to Fort Madison in 1847, and is now a night watch at the Atlee mills; Peter O'Kell has resided in Fort Madison about thirteen years, and during most of that time has worked at the Atlee mills, helping to land rafts in front of them, selecting logs to be sawed, &c.; Samuel Atlee, respondent, helped remove

boulders, is riparian owner at present, and has been employed in and about the mills since they were erected; C. Pyle, a worker in saw mills; who has worked at the Atlee mills for nine months of each year for the last ten years, and P. Cowle, who has resided in Fort Madison since 1838, and worked at the Atlee mills for the last nine years; these testify that they are well acquainted with the location of the upper pier and the gravel point at the mouth of French Creek, and the route which steamboats have followed in front of Atlee's mill since they respectively resided in Fort Madison; and they prove that the pier is not in the channel which steamboats have run since they came to Fort Madison; that boats have uniformly as they have seen them, passed a considerable distance outside of the piers, and usually pointing from the outside of the gravel point towards the Illinois shore; and that neither of them has ever seen a boat run where the pier now stands, or nearer than it to the shore, except at one time when a railroad bridge had given away, and Atlee removed some trees on the bank to let the Fort Madison and Davenport steam packets land on his land to accommodate passengers on the railroad, and at several other times when Atlee opened his boom to let some small Rapids steamers in to the shore to get lumber and fuel from the mill yard. And these witnesses prove that since the erection of the mills, almost constantly there have been rafts in front of the mills during the summer season, extending a number of feet into the river out beyond the location of the pier. And here we will remark, that the testimony of those witnesses was taken at Fort Madison, and that they were rigidly cross-examined by attorney of libellant, and that if other residents of Fort

Madison could have been found to contradict them, they would have been presented; for libellant's attorney was very active and faithful (as we saw) in looking for evidence. But we now remember that libellant did produce *one* witness of Fort Madison, a Mr. Hatch, who is a raftsman, to contradict *our* Fort Madison witnesses; but unfortunately for libellant, he testified that Atlee required 200 feet of water in front of his mill for the use of his rafts, which is 50 feet in the river beyond the pier; and which, argumentatively, tends to show that libellant's pilot witnesses, who swear that they have run boats where the pier stands, if they did so, must have ploughed through log rafts to have done it, unless they did it before the mill was erected.

But, indeed, we cannot consent to let much importance be attached to libellant's witnesses. Aside from their partiality for libellant, and their hatred as river-men of everything that even seemingly retrenches on their undisputed control of the river from bank to bank, they make the most glaring, egregious, and unaccountable mistakes and blunders, in their statements of the width of the channel in front of the gravel point, and of the upper pier. Most of them, and indeed all of them, except three or four, limit the width of the navigable channel in front of these points, to from one hundred and fifty feet to not exceed three hundred feet. Whilst on the other hand actual survey and measurement, show that there is a wide river of channel outside of both of these points, to-wit: 600 feet outside of the gravel point, and 560 feet outside of the pier, of over 10 feet of water, before a point of less than 10 feet of water is reached. And for aught that appears in evidence, that ten feet of water

when reached, may have thus continued and extended nearly to the Illinois shore. When men who claim to be experts in the knowledge of a channel, show such profound and inexcusable ignorance about its width, what credibility ought to be given to other portions of their evidence, based on their opinion and judgment?

This brings us to the consideration of the evidence based on surveys and figures, and on close personal observation, made with special reference to the location and course of the channel in front of the Atlee mills. And we beg to say that testimony of this character is of the most reliable kind, and is worth vastly more than the opinions of experts, who at the least, can give only such impressions as they have received from a general and casual acquaintance with the pier and its surroundings.

Heath, surveyor, made the diagram filed in this case, marked Exhibit O. P. Q. He made the survey on which the diagram is based "on the 9th day of October, 1871." In the month of August, 1872, he made a survey of the depth and width of the channel directly in front of the gravel point at the mouth of French Creek, and found "it extends out in ten of water for six hundred feet."

He at the same date, made a survey of the depth and width of the channel in front of the upper pier, and says: "It is seven and a half feet at the pier, and in less than no time, and as soon as you can pull a skiff * * it is over ten feet deep. I did not use only a ten foot measure. After I got deeper than that I did not sound, for that is more water than any boat draws. * * * It was about five hundred and sixty feet of water over ten feet deep out in the river opposite the upper pier."

When Heath got to a point where his sounding pole struck bottom, he went no farther; and for aught that appears in evidence, the water there may have been deep enough for common purposes of navigation to the Island, a quarter of a mile beyond where he stopped. That there is a bar or shoal water out six hundred feet beyond the pier is evident enough; but as it is always covered with water, who can say from the evidence in this case, what is its extent, or how deep is it covered with water?"

E. H. Worrall, U. S. Civil Engineer, engaged on the improvement of the Lower Rapids, with A. H. Burnham, Civil Engineer in employ of the United States, in charge of the Lower Rapids Improvements, and J. A. McDowell, Civil Engineer of Keokuk, in March, 1872, together, made a survey of the gravel point, the upper pier, depth of water about them, and close by, examined and observed the course of the current of the river at these points. The gravel point was several feet out of water, as it always is, except in high stages of water, and though there was some permanent ice close along the shore, the river was full of running ice, which gave them peculiar advantages to observe the course and flow of the current and channel of the river. He says the upper corner of the upper pier is 127 feet from the bank of the river, and the lower corner is 124 feet from the bank of the river.—Hence twenty years ago, when the bank extended out 100 feet farther than it does now, it came within 24 feet of where the pier stands; and yet libellant's pilot witnesses used to navigate their big steamers through 24 feet of space, jolting and knocking the boulders out of their way as they glided along!

But to return to Worrall. He shows by actual meas-

urement, as delineated on his diagram, that the channel and current of river is, of *necessity*, outside of the pier; and he shows by actual observation made of the floating ice, that the channel impinging on the gravel point, moves diagonally from that point towards the Illinois shore.—The ice passing the gravel point did not draw in towards the pier, but went still farther from it. He shows by the diagram and survey, that the gravel point extends a considerable distance out farther into the river than the pier; that the pier lays below and behind the gravel point, and that it would be contrary to all *knowledge* and *science* for the channel to pass outside of the gravel point, and then turn almost squarely and come in below it; and that the real effect of that point is to create an eddy below it. We would especially call the attention of the court to the testimony of this impartial and unprejudiced witness, who has made the line and course, and wear and bearing of waters, a scientific and practical study of years.

We think we have now demonstrated beyond a reasonable doubt, that the harbor where the pier stands, on which the boom rests, was made available as a log harbor by the act of the elder Atlee in removing the rocks and boulders which laid thick in the location of the pier, and that the pier is not in the channel, but simply on the *edge* or *west side* of it, with a clean and clear navigable channel of over ten feet in depth for five hundred and sixty feet in width in front of it. What business then had the Phil Sheridan to collide with the pier? O, says counsel for libellant, the pilot in charge, Gall, did not know of the pier, and came over the gravel point, the water being high, and allowing of a passage over that point. But

Gall does not testify that he came over the gravel point; and the fact that he does not thus testify, is evidence clear to us, that he did not know exactly where he was running the boat and barge. He had been for one year off the river; he had not seen that point for one year, and had evidently become confused as to its location and bearings; and would probably have come up against the bank of the river, if the pier had not been in the way. That the boat did not come over the gravel point appears evident to us from the consideration, that though Gall had forgotten the bearings of the channel in front of the Atlee mills, yet he could hardly have forgotten the existence of those extensive sawing establishments, and especially the fact, that in front of the mills lay usually heavy log rafts extending out into the river, some times as far as two hundred feet beyond the shore line. It seems to us that his recollection of those mills must have deterred him from crossing the gravel point, when the probabilities were that by so doing he would have to break a boom and drive into the midst of rafts of heavy logs. Though the evidence shows there were but a few logs there at the time of the colliding, yet how could he know but what the boom was as full of logs as usual. We claim, therefore, that inasmuch as it is not proved that the barge crossed the gravel point, and it is not reasonable to suppose that Gall would have run the risk of possibly driving into a raft of logs, that the colliding and accident which sunk the Jack Reaney, was the exclusive fault and negligence of libellant. And we think and claim, that the District Court should not have decreed against us for one-half the damages done to the barge, since the negligence was exclusively that of libellant.

The evidence in the case, and about which there is no conflict of testimony, shows that several years ago, the respondent in this case, became the riparian owner and proprietor of the land along the river where the mills stand, and in front of which stands the pier in controversy.

Thus far the object of our argument has been simply to negative the averments of libellant, that the pier on which the colliding occurred, "*stands in the navigable channel of the Mississippi river, and is an obstruction to navigation,*" *and that it was through the fault and negligence of respondent that the injury was done to the* barge Jack Reaney.

We think and claim, that the weight and preponderance of the aggregate of the evidence duly criticised and considered, prove that the elder Atlee created the harbor where the pier stands by removing from it the boulders and making it available for the landing of either rafts or boats; that the navigable current or channel of the river does not set in against or towards the pier; that the pier is not in the navigable channel of the river; that the pier is a necessity of respondent's extended business, as like piers are necessities of the business of other riparian owners engaged in the saw mill business along the Mississippi river, commencing at Keokuk, and extending to St. Anthony's Falls; and that the injury to the barge Jack Reaney, was occasioned by the sole negligence of libellant, and for which respondent is not in justice, and should not in law be held liable.

One other consideration will, we think, conclusively show that the pier in question was not in the ordinary

channel of navigation. The evidence showed the following facts as stated by the Circuit Judge in his opinion in this case.

"About 600 or 700 feet above (the pier) is a bar or delta from a creek which projects into the river about 300 feet from which point the bank of the river recedes so that the respondent's land on the bank is about 200 feet *in* from where a straight line drawn from the point of the delta to the shore below, would come."

Thus it appears that in order to strike the pier it was necessary for the steamer Sheridan to pass round the delta, and turn in towards the shore. In other words it was necessary to turn out of the usual channel, and leave the ordinary track of vessels.

II.

In Yates vs. Milwaukee, *supra*, it is distinctly held that among the rights of the riparian proprietor "are *access to the navigable part of the river from the front of his lot, the right to make a landing, wharf or pier, for his own use or for the public*, subject to such general rules and regulations as the legislature may see proper to impose for the protection of the rights of the public, whatever those may be." And also that such riparian owners have the right "to avail themselves of the advantage of the navigable channel, *by building wharves and docks to it for that purpose*."

The riparian owner, then, may avail himself of the advantage of the navigable channel, by building to it. But suppose this navigable channel is fluctuating, as it must

be on all the rivers of the country? Suppose it is limited to a somewhat narrow channel near the center of the river at very low water, and widens as the water rises, until at high water it reaches from bank to bank. *At what stage of the water may he build to the navigable channel?* Clearly at low water, for otherwise he could not have access to it at all seasons. If this right of access to the navigable channel, and the right to build to it, is, as this court has declared in the case just cited, valuable property, such as the riparian proprietor has a right to own and enjoy, and such as the law will protect, it follows that it may be enjoyed at *all times*, and hence, of course at times of low water, provided, of course, it can be enjoyed without the *actual* and *material* obstruction of navigation. The law is now settled by the decision of this—the highest judicial tribunal in the land, that the riparian owner may pass the boundary of his title, and may establish and keep up communication between his property on shore, and the navigable channel. This right is guaranteed to him upon the ground that it is property, and valuable, and if property and valuable, it may clearly be enjoyed all the time, and a construction of the law which would deprive him of his property during a part of each year, without any public necessity to demand it, would be contrary to the first principles of justice and right.

It is suggested in the opinion of the Circuit Court in this case, that the doctrine of Yates vs. Milwaukee, does not apply, because the structure in question is not a "wharf or landing place." The Court says:

The reason why wharves and landing places are thus sanctioned is that they are aids to navigation, and neces-

sary for the reasonable enjoyment of the respective rights of the public and the riparian proprietor. But the right to erect piers in the navigable channel in order to construct a boom for the protection and detention of logs until the riparian proprietor may manufacture them rests upon no such usage; nor can such be justly said to be aids to navigation, which it is to be remembered is the paramount right, not in the least to be infringed without legislative sanction."

To this we reply, in the first place, that the floating of saw logs down the Mississippi river, and the landing them at points where they can be manufactured, and the securing them until they can be taken from the river, to be manufactured, is a very important branch of commerce and navigation. It is the means by which a vast region of country, almost destitute of timber, is to be supplied with lumber from the pineries of the upper Mississippi. It needs and demands protection as much as any of the interests of commerce or of navigation. It is a fact well known—and also well proved in this case—that rafts of logs landed to the shore without the protection to be afforded by an artificial pier or boom, are liable to be washed away and lost, and that such pier or boom is a necessity in the operation of saw mills on that river. Nor is this a purely private interest. The public is largely interested in maintaining and operating these establishments for manufacturing lumber along the shores of our great river. It is an interest in which the whole community is peculiarly interested, because of the scarcity of timber in many of the states of the Mississippi valley, and we must be allowed here to express the earnest hope that

the facilities for landing rafts, and for securing their safety when landed, may not be rendered, by the decision of this Court, less ample than those for the protection of steamboats and other water crafts. It has long been settled that rafts or logs and lumber, while descending the river, have the right to the channel to the exclusion of water crafts more easily guided and managed. This rule of itself is an acknowledgement of the vast importance to the public, as well as to individuals of this lumber trade. We submit with all due deference to the circuit court, that booms and piers for the safe landing and protection of logs and lumber, are "aids to navigation, and necessary for the reasonable enjoyment of the respective rights of the public, and the riparian proprietor."

We answer further the suggestion of the Circuit Court, by quoting again from the opinion of *this* court. The circuit court expresses the opinion that only wharves and landing places for vessels are sanctioned by this law, and that a pier or boom for the protection and detention of logs, is not sanctioned. But this Court says in Yates vs. Milwaukee:

"But whether the *title* of the owner of such a lot extends beyond the dry land or not, he is certainly entitled to the rights of a riparian proprietor, whose land is bounded by a navigable stream; and among those rights are access to the navigable part of the river from the front of his lot, the right to make a landing, wharf *or pier for his own use*, or for the use of the public," &c. And the whole opinion sustains the doctrine that the riparian proprietor has a *private* property in the river front. He

may make such a structure to communicate between his land on the main shore and the navigable channel, as his business and his interests may require. Suppose respondent had built a private wharf out to the point where the pier was located. He would then have been clearly within the decision of this court, provided his wharf was not an obstruction to navigation *in fact*. And what difference could it make to the navigator, whether the structure be called a wharf or a pier? The right to erect it does not depend upon the use to which it is to be put, because, as this Court declares, the riparian owner may build it for his own use *or* for the use of the public. If he may construct it for his own use, upon what principle can it be said that he must use it for the landing of vessels, and cannot use it for the landing and protection of rafts?

III.

Our last proposition is, that the structure in question is lawful, even though it extends into the river slightly beyond what is generally understood as the line of navigability, provided it does not materially obstruct navigation. The District Court decided the case upon this point without deciding whether the pier was in fact within the navigable channel. And upon a careful examination of the opinion of Hon. J. M. Love, Judge of that Court, we are satisfied that we can add nothing to it, and we therefore print it herewith as a part of our argument, and submit the case, so far as the opening is concerned, without further remarks.

McCRARY, MILLER & McCRARY,
for Appellant.

Obstructing Navigation of the Mississippi.

Opinion by Hon. James M. Love, Judge of the U. S. District Court of Iowa.

THE NORTHWESTERN UNION PACKET COMPANY, vs. SAMUEL ATLEE. | In the U. S. District Court, District of Iowa.

This is a proceeding in admiralty, in which libellant claims damages resulting from a collision of the libellant's boat, navigating the Mississippi river, with a pier placed in the river by the respondent. There is in this case a great mass of conflicting testimony, taken to establish certain facts which counsel seem to have considered necessary to their respective views of the questions involved. I deem it unnecessary to go into this conflicting testimony, or to state the disputed facts. There are, in the case, facts not disputed or fully proved, quite sufficient to warrant the judgment which, with my view of the law, I feel called upon to pronounce. These facts I shall proceed to state.

The respondent owned a tract of land upon the banks of the Mississippi river, near the town of Fort Madison, Lee County, Iowa. He had upon this tract of land extensive mills, for the purpose of sawing logs, which he had long been in the practice of rafting and mooring to the shore opposite his land and mill.

These log rafts had generally, during the most of the boating seasons, for many years before the collision in question extended into the river beyond the pier with which the boat collided. The respondent found his logs and rafts quite insecure. The waves created by passing boats and other casualties broke them up and floated them off. He, therefore, in the winter of 1870 and 1871, erected in the river two piers, to which he attached a boom for the protection of his rafts. Whether these piers were in the channel or not is a disputed fact,

which with my view of the law of the case I deem it unnecessary to determine. The proof is satisfactory that there was a wide expanse of deep navigable water beyond the piers; that the stress of the current was beyond that point; and that the usual and ordinary track of boats had been some distance east of the log rafts and of the piers. The respondent kept no lights on the piers at night until after the collision. The collision occurred early in the spring. The colliding boat was descending the river. The night was dark and the piers could not be seen. The pilot did not know the existence of the piers. He was an experienced and skillful pilot, but he had not been in that navigation for a year prior to the collision. He did not keep to the middle of the channel, but ran his boat toward the point where the pier stood. The boat had a barge in tow which struck the pier. The barge was crushed in by the collision and sank in a few moments in deep water with her cargo. It is also in evidence that after the collision the respondent placed lights upon his piers, and that no accident afterwards occurred. It is further sufficiently shown that the water was, at the point where the piers stood, deep enough for the free and safe passage of the boat. It was, in fact, a season of high water in the river, so that boats could safely pass almost anywhere, unless impeded by artificial obstructions.

The case thus presented to the court involves the interesting question of riparian rights upon our great rivers. What are the rights of riparian owners upon the navigable rivers of this country? What is their extent? How far may the riparian owner encroach, if at all, upon the water-way in front of him, and where must he stop?

The libellant contends that the riparian rights of the owner of land are coextensive only with his title; that, as his title extends to only high water mark, he cannot, without license from some competent authority in the State, make any erection whatever beyond that line of ownership; that whenever he oversteps that line he becomes as it were a trespasser; that the public have the right of navigation in every part of a navigable river, and that any erection whatever in any part of the same without public authority is *pro tanto* an obstruction to navigation, unlawful, and therefore a nuisance.

There is much plausibility in this view of the law, and it certainly finds support in many adjudicated cases in the State Courts, and in the text of some el-

ementary writers. It seems at first glance anomalous that the owner of land should be authorized by common right to put structures upon ground to which he has no title; and it is very difficult for the legal mind to become reconciled to the claim of such a right. Nevertheless it is clear that certain riparian rights which this court is bound, under the decision of the Supreme Court of the United States, to recognize, do exist beyond not only the line of high water, but even beyond low water mark. Navigation itself would be futile if the strict doctrine urged by the libellant were received as law.

Wharves, levees, docks, quays, landing places, shipyards and numberless other structures in aid of commerce along the shore, extending even beyond low water mark, are indispensable to successful and useful navigation. The Supreme Court has relieved us from the necessity of considering the general question of right raised by the libellant. We have no occasion to discuss the libellant's position that the riparian owner may not pass the line of his ownership. The Supreme Court has settled that question against him. The doctrine of that Court is, that the riparian owner may, for the purpose of commerce and navigation, extend his structures not only to low water mark but through shoal water until he reaches the line of navigability. See Dutton vs. Strong, 1 Black; Yates vs. Milwaukee, 10 Wallace.

The dictum of the court seems to be that he may not pass that line. I say the dictum of the court because there was nothing in the cases decided requiring the court to decide that the riparian owner may not, in cases of necessity, extend his structures beyond the line of so called navigability. In none of the cases decided in that court had the structures complained of, been in fact extended beyond the line of navigable water. Hence it was sufficient for the court in those cases to decide that the structures were lawful as far as they had gone. When a case shall arise in which the riparian owner shall have extended his erections beyond the so-called line of navigability, the direct question will be presented as to whether the structures in question must be limited to the strict line of navigable water or not. It is evident that we must seek some rule or principle by which the conflicting claims of persons navigating the river and riparian owners may be determined, and if possible reconciled.—There are great interests, public and private, connected with the commerce of the shore; there are vast interests, public and private, appertaining to the navigation of the river. The law would fain reconcile these interests. Some

principle must be adopted by which both of the interests in question may be promoted, and neither materially impaired.

The line of navigability is an arbitrary line. It may or may not be absolutely necessary to pass that line with wharves, levees and other structures required by commerce and navigation. Water sufficient to float vessels of one class is quite inadequate to those of another. Now if structures absolutely needful to the purpose of commerce and navigation must necessarily stop at the arbitrary line of navigable water, how are vessels of the largest class to be provided for? How are vessels which draw twice or thrice the water required by vessels of smaller burthen to be brought up to levees, wharves and landings extending only to the strict line of navigability, and no further. Take for illustration the case of shipyards, which are indispensable to the purposes of navigation and commerce. If the ship builder must limit his structures to the strict line of navigable water, how is he to get great vessels, that float only in very deep water, on his stocks? How are such vessels with their immense cargoes to reach wharves, landings, quays, docks, etc., extending only to the line of navigable water?

Why is it that a riparian owner may pass the line of his ownership and build at all upon ground that he does not own?

Simply for the reason that the necessities of commerce and navigation require it. It would seem, then, that the law ought to recognize some principle adequate to those necessities. The law would be illogical if it allowed a riparian owner to build in front of him beyond his own line, upon the principle of serving the ends of commerce and navigation, and yet arrested his structures at a point falling far short of the demands and necessities of those great interests. The principle once recognized upon grounds of public policy rather than strict proprietary right, ought to be made co-extensive with needs and requirements of that policy.

None but riparian proprietors could provide for the wants of commerce and navigation in this regard. If the legislature should authorize any other than riparian owner to build the needful structures between high water mark and the line of navigability, the person so licensed would still be wanting in adjacent land which he could not occupy without the consent of the riparian own-

er. Hence from the necessities of the case, and in order to provide indispensable facilities for commerce and navigation, the law recognizes the right of the riparian owner to build and improve in front of him to the extent required by those great interests.

Now if it be true that the necessities of navigation and commerce demand that the riparian owner should be allowed to put his structures into the river, beyond the mere line of navigability, why should not the law favor his right to do so, provided always, that he should not *materially* obstruct the navigation? If the riparian owner should, without material injury to the navigation, by advancing his structures into deep water beyond the mere line of navigability greatly facilitate commerce, and provide means of lading and unlading the largest vessels, I can see no good reason why the law should arrest his beneficial work by a mere arbitrary line.

There is, perhaps, not a levee, wharf or quay in front of any considerable town or city, which does not of necessity extend beyond the line of mere navigability. This is necessarily so, since otherwise boats of large draft could not be landed and discharged of their cargoes. But perhaps it will be said that improvements of this kind have been made by public authority, and that they hence furnish no argument to justify structures built by riparian rights only. But this I apprehend will, on reflection, be found to be a mistaken view of the facts. The proprietors of land lay off towns and cities on the bank of navigable rivers and dedicate the ground in front of them on the stream to be used of the public for wharfs, &c. The Legislature grants a charter to the town or city, authorizing, in terms express or implied, the construction of wharves and levees. No authority is given to the town or city to build to any particular line, much less to obstruct navigation: and as to the Mississippi river, it is clear that no State could authorize the obstruction of its navigation; for the free and unimpeded navigation is declared and secured by acts of Congress and by treaties of foreign nations. Towns and cities take the place of the riparian owner, and by virtue of the grant, exercise his rights and none other with respect to the extent of such improvements.

What, then, is the true principle by which the rights of the riparian owner are to be determined and regulated? With respect to bridges which are, be-

yond doubt, obstructions to navigation, the principle established is that the builder must so construct them as not *materially* to obstruct and endanger navigation. I can see no reason whatever, why the same principle should not apply to erections and improvements made by the riparian proprietor. The same necessity exists for riparian erections as for bridges. The same interests of navigation and commerce are to be consulted and reconciled. If, in either case, important works should be constructed for the convenience of commerce, without any material detriment to the interests of navigation, it would seem that the law ought rather to favor than discountenance such improvements.

But the question here presents itself, what is a material obstruction to navigation? It is often difficult to give a definition at once exact and comprehensive. If, however, we turn again to the bridges which have been erected over the Mississippi, we will find some light to direct our judgment. These bridges are beyond doubt obstructions far more serious than any structures which riparian owners, even if the principle applicable to bridge building be applied to them, will ever in all human probability erect. But it is settled that bridges are not to be created as *per se* obstructions to navigation. Where the builders of bridges leave a water way, through which boats may, by means of a draw in the bridge, pass without danger, with the exercise of ordinary skill and care, the courts treat the structure as no material obstruction to navigation. Why should not the same principle with far less danger of abuse in practice be applied to needful and indispensable improvements along the shore? A riparian owner constructs in front of his land, in navigable water, if you will, some needful and useful work to promote the convenience and safety of commerce. He leaves a wide and ample expanse of navigable water, beyond his improvement. Nobody is injured. The mariner, with the exercise of ordinary care and skill, may pass without injury or even danger. The public who are interested in commerce and navigation are greatly benefited. The riparian owner has done a public good without injury to any one, the more so because he has extended his works beyond the mere line of navigability into deep water where the largest vessels may be accommodated. Why should his improvements be declared a nuisance, and to the injury of the public as well as to himself ordered to be removed upon the mere technical allegation that he has passed the line of navigable water? But it may be said that the rule suggested is uncertain and difficult of application. This may readily be admitted, and it may be affirmed

with equal truth, that the rule fixing the line of navigable water, is equally uncertain and difficult of practical application. What is navigable water?—No court can fix any arbitrary depth of waters as navigable. Whether therefore we adopt the rule of navigability or the rule here suggested as the limit of riparian rights we have from the nature of the case an uncertain criterion, and every case must, of necessity, be determined upon its own facts and circumstances.

I apprehend that the same rule, which is applicable to riparian structures on navigable rivers, must be applied to lakes, bays and harbors. Now the necessities of commerce require that riparian structures should be extended into lakes, bays and harbors to a depth of water sufficient to float vessels of the very greatest burden. To stop short of this would manifestly be to leave the most important wants of commerce unprovided for. It is manifest that a rule which would limit such structures to the mere line of navigability, cannot be a correct rule, since structures limited would be wholly inadequate to the indispensable necessities of commerce. Such a rule moreover, would seem to be entirely arbitrary, and quite superfluous as a guard against obstructions to navigation, seeing that beyond such structures there would necessarily be a wide expanse of open sea, and deep navigable water. But the rule allowing to any extent in a bay, lake or harbor, riparian structures, which would facilitate commerce and not materially injure or obstruct navgiation, would be in my opinion, just and reasonable, and well calculated to meet and reconcile the wants and exigencies of commerce and navigation.

For these reasons the court is of the opinion,

1st. That although the title of a riparian owner on the Mississippi river extends only to high water mark, yet he may, in the exercise of his riparian rights, put such structures in the river in front of his land as are necessary, proper and convenient to carry on the business of commerce and navigation.

2d. That the true limitation of these riparian rights, is that the owner shall place no erection or structure in the river which shall materially impede or obstruct the navigation.

3d. The true question in every case must be,

1st. Whether or not the structure is needful and proper for the purpose of navigation or commerce.

2d. Whether or not it presents any material obstruction to navigation.

And with respect to the case at the bar, the court holds,

1st. That the respondent had a right to place in the river in front of his land the piers in question, in order to make a sufficient boom to secure his log rafts.

2nd. That inasmuch as there was a water way of five or six hundred feet or more, and piers, and inasmuch as the evidence establishes the fact that the usual and ordinary track of boats was some distance east of the piers, they presented no material obstruction to navigation.

3d. That a riparian owner must, in the exercise of his rights, take care not to expose to unnecessary peril persons and property upon the river, and that he is bound to use reasonable care and diligence to prevent injury or damage to the same.

4th. That inasmuch as the piers in question were erected between the close of navigation and its opening in the spring of 1871 and since, therefore, the respondent had reason to know that the existence of these structures might possibly be unknown to pilots in the early navigation of the river, it was his duty to keep lights upon them to warn the navigators of their existence.

5th. The respondent having failed to give this warning, was guilty of negligence, and is, in part at least, liable for the damages resulting from a collision which would in all probability have been averted if he had performed his duty in this respect.

6th. But neither was the boat without blame. She was out of the usual and ordinary track in a dark night. Her pilot, who had been absent from this navigation for a year previous, seems to have made no inquiry as to obstructions at a point where he must have known that large rafts had been usually moored during many past years for most of the boating season to a considerable distance beyond the line of the piers in question. The pilot had every reason to apprehend that he would, at least, encounter rafts in the track which he

somewhat rashly took that night. According to the doctrine of the cases in 18 Howard 584, 19 How. 56, 3 How 310, it was his duty to keep his descending boat to the middle of the channel, where, according to the evidence, is the deepest water and the stress of the current at that point. If he had exercised ordinary care and forethought he would have passed without injury to the boat by keeping out in the channel in the usual track of descending boats.

Inasmuch, therefore, as there was mutual fault, the damages, in accordance with the rule in admiralty, must be divided between the parties.

The case is therefore referred to John H. Craig, as commissioner, to make inquiry of the damages and report to the court.

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In the Supreme Court

Of the United States.

THE NORTH WESTERN UNION PACKET CO.
Appellee.
vs.
SAMUEL ATLEE,
Appellant.
} IN ADMIRALTY

REPLY TO ARGUMENT OF COUNSEL FOR APPELLEE.

I.

Counsel for appellee open their argument with what they term "a statement of facts," in which statement they include the facts which are controverted and those which are not. Since there is in this case a great mass of conflicting testimony concerning many of these facts, the Court will of course not rely upon any statement of counsel on either side, but will look into the proofs.

No statement of counsel can be of any value to the court, so far as it relates to disputed facts, unless it be accompanied by a statement of, or reference to, the evidence which is relied upon to establish its correctness. Many of the facts stated by our opponents are disputed, and these must be considered when discussing the evidence. We are quite content with the following statement

of "facts not disputed or fully proved," which we extract from the opinion in this case of His Honor, Judge Love, of the District Court.

"The respondent owned a tract of land upon the banks of the Mississippi river, near the town of Fort Madison, Lee County, Iowa. He had upon this tract of land extensive mills, for the purpose of sawing logs, which he had long been in the practice of rafting and mooring to the shore opposite his land and mill.

These log rafts had generally, during the most of the boating seasons, for many years before the collision in question, extended into the river beyond the pier with which the boat collided. The respondent found his logs and rafts quite insecure. The waves created by passing boats and other casualties broke them up and floated them off. He, therefore, in the winter of 1870 and 1871, erected in the river two piers, to which he attached a boom for the protection of his rafts.

The proof is satisfactory that there was a wide expanse of deep navigable water beyond the piers; that the stress of the current was beyond that point, and that the usual and ordinary track of boats had been some distance east of the log rafts and of the piers. The respondent kept no lights on the piers at night until after the collision. The collision occurred early in the spring. The colliding boat was descending the river. The night was dark and the piers could not be seen. The pilot did not know the existence of the piers. He was an experienced and skillful pilot, but he had not been in that navigation for a year prior to the collision. He did not keep to the middle of the channel, but ran his boat toward the point where the pier stood. The boat had a barge in tow which struck the pier. The barge was crushed in by the collision and

sank in a few moments in deep water with her cargo. It is also in evidence that after the collision the respondent placed lights upon his piers, and that no accident afterwards occurred. It is further sufficiently shown that the water was, at the point where the piers stood, deep enough for the free and safe passage of the boat. It was, in fact, a season of high water in the river, so that boats could safely pass almost anywhere, unless impeded by artificial obstructions."

The Judge very properly observes that "whether these piers were in the channel or not is a disputed fact." The evidence which on the one side goes to establish, and on the other to disprove, this alleged obstruction of the channel, is the subject of controversy and argument, and has already been discussed by us. It will be further noticed as we proceed with this reply.

II.

Counsel for appellee dwell much upon the alleged fact, that the water is always deep enough around where the piers stand to float a steamboat. If this fact were admitted what would it prove?—Certainly not that the piers are in the ordinary navigable channel. Wherever there is a landing place for vessels or rafts, whether it be at the main shore or at a levee or pier, the water must, as a matter of course, be deep enough to float all vessels or crafts that may land or moor there. The depth of the water around the piers then proves nothing, unless we are to assume that the navigable channel extends to every point where there is water deep enough to float a steamer. A moment's reflection will satisfy the court that there is deep water at many points along the shore, at levees, piers and landing places, which does not belong to the channel.

There are harbors, where vessels may lay up, in time of storm, and landing places for crafts of all kinds and for rafts, which must of necessity be at or near the shore. At these places there must be deep water, or they will fail to answer the purposes for which they were intended.

If the water had not been of considerable depth at, and around the piers in question, it would have been impossible to moor large rafts between them and the shore. We insist, therefore, that the depth of the water around the piers does not prove that they are in the channel, nor that respondent has done anything more than, as riparian proprietor, he was authorized to do. He had a right to build out to the navigable channel, and in so doing, he must of necessity, have placed his structure in water of considerable depth. Every pier, levee or landing place on the river might be pronounced a nuisance if the fact that they extend into deep water, was of itself sufficient to prove that they are in the channel.

III.

It is stated by counsel for appellee in their argument, that "at a low stage of water, *when the gravel bar is bare*, the effect of the gravel bar is to turn a portion of the current at this point out into the river, but the general direction and force of the current is towards and along close to the Iowa shore until it reaches a point below the lower pier, where it crosses over to the eastern or Illinois shore."

Now, we insist that, not a portion only, but the whole of the current is turned from the Iowa shore at the gravel bar and sets from that point towards the Illinois shore, so that the Phil Sheridan, on the night of the accident, was not only turned out of the

ordinary channel, but was turned out of, and made to run against the course of the current. There was a wide expanse of deep navigable water, far outside of the pier, and the ordinary course of vessels as well as of the current led into it.

It is not merely at low water when the gravel bar is bare, that the current is turned at this point away from the pier and the Iowa shore. Upon this point we deem it proper to quote from the testimony as follows:

WM. R. SLOCUM.

Ques. "Have you ever observed the gravel bank at the mouth of French Creek, above the upper pier, if so, what direction does the water take after passing said gravel bar?"

Ans. "I have noticed it. It runs straight down the river. I should think the water running against the point of that bar would naturally turn the water out towards the Illinois shore. * * * As soon as you strike the point the channel forces it (the raft) out into the river." Transcript page 474.

"The water runs away from the point." Transcript page 476.

B. W. DAVIS.

Ques. "Do you know what is the direction of the current after it passes around the gravel point?"

Ans. "I do not know at the present how it runs. It used to run from the Iowa shore towards the Illinois shore, when I was on the river. When I was on the river it started off quartering from the Iowa shore toward the Illinois shore, or seemed to. Transcript pp. 599-600.

Ques. "How far below the gravel bar did the current begin to turn toward the Illinois shore."

Ans. "I think right at the point of the gravel bar." Page 606.

JOHN ATLEE.

Ques. "Do you know in which way the current or channel of the river sets after it passes the point of the gravel bar?"

Ans. "At the point of that bar the current sets very hard toward the island on the Illinois side."

Ques. "How does a raft usually run after it passes the point of the gravel bar?"

Ans. "At a low stage of water or a medium stage they pass outside of the gravel bar, and then pass rather straight down the river *angling some towards the Illinois shore.* Transcript, pages 618 and 619."

Ques. "Explain how you get rafts to drop in behind the gravel point when the water is not high enough to let them pass over the delta?"

Ans. "We tie a heavy line to a post on the shore then let them run out until they get by the gravel bar, then fasten the other end of the line on the raft which swings them in; *otherwise they would never come in by that pier,* they would ordinarily go 100 feet from the pier. I know it from experience." Transcript page 625.

Ans. "I have thrown in logs of wood up by the ferry landing and let them float down; when the wind was on this shore they passed around the bar and went from 50 to 100 feet outside of the pier. I have also seen boats, &c., adrift; and they would do the same thing. I have also let logs loose from the rafts above that bar, and have followed them down thinking to catch them at the point of the bar, but the current would take them right out." Transcript page 629.

Ques. "How far out in the current did you throw the things that you say you threw into the current?"

Ans. "I suppose about ten feet. Page 642."

JAMES W. CAMPBELL.

"From that point (the gravel point) the channel runs *at an angle of 30 to 33 degrees from the main shore opposite upper pier.*" Page 669.

A. B. WOODWARD.

"The channel sets in very strong at the upper end of the gravel bar and sets out at the lower end." Page 697.

Ques. "In an ordinary stage of water how far will a raft float out from Atlee's upper pier when not interfered with by wind?"

Ans. "In an ordinary stage of water it would pass fifty feet from the upper pier." Page 694.

Ques. "What is the effect of the sand bar which lays out in the river from the pier, upon the current?"

Ans. "The effect of the bar is that when the water drops over it, it has the effect to draw the water out into the river towards the Illinois shore." Page 692.

Ques. "Suppose the raft to hit the gravel bar, would it not swing around and keep hitting the bank below?"

Ans. "After she hit the gravel bar I think she would not hit the shore or bank of the river below without some wind, *as the water draws out from there.*" Page 697.

WILLIAM A. GRIFFEY.

Ques. "Will you explain fully and in your own way which way the current and channel sets after passing the bar at the mouth of French Creek, and how the current or channel is affected, if at all, by a sand bar in the vicinity of said gravel point?"

Ans. "The water sets off. You may take a log raft as I have done and if you run it wide enough to pass the point of the bar it will run a hundred feet from the upper pier, unless you pull it in. The point sets the current out." Page 759.

Ques. "In a low or ordinary stage of water which way does the water run after it passes the gravel point at the mouth of French creek?"

Ans. "It runs towards the Illinois shore. It runs straight from the gravel point toward the Illinois shore for about half a mile in the middle of the river, until it strikes the point of a bar on the left hand side, then closes towards the Illinois shore, then crosses under the big bar to the Iowa shore." Page 780.

Ques. "Where, with reference to that point, does the current of the river cross to the Illinois shore?"

Ans. "It commences crossing at the point of this gravel bar." Page 788.

CHARLEY P. BEARD.

Ques. "What direction does the water take immediately after passing said gravel bar?"

Ans. "Immediately after passing it, it runs very near with the bank of the river and gradually sets across to the Illinois shore." Page 800.

P. COLE.

Ques. "You still say that the current of the river runs quartering from the gravel bar over towards the island?"

Ans. "I say as I said before, that it verges from the gravel bar toward the island from the Iowa shore. I would not say very much until it gets about opposite the lower pier." Page 815.

THOMAS W. WRIGHT.

"The channel strikes the bar at mouth of French Creek, and descends angling from there from the Iowa shore to the Illinois shore." Page 827.

E. H. WORRALL.

"The line of current above the delta of French Creek strikes obliquely against said delta and is turned to the left, gradually towards the Illinois shore." Page 851.

Ques. "Suppose the channel or current of the river naturally presses against the Ft. Madison shore until it strikes the delta or gravel bank at the mouth of French Creek; what effect would that delta in consequence have, if any, on the current or channel immediately below the delta?"

Ans. "The first effect is an eddy created behind the delta, caused by the divergence of the current; and the current could not overcome that divergence, unless it was very swift, in I should say 800 or 1000 feet."

Ques. "In view of said delta where would the current draw immediately in front of the pier, towards the pier or from the pier?

Ans. It would draw outside of the pier at the stage of water when the survey was taken. I mean it would draw away from the pier." Page 859.

IV.

It is further said by counsel that the water where the pier stands has been regarded as navigable and as a part of the channel, and in proof of this the testimony of certain pilots is referred to, in which they state that they have seen boats pass over the place where the pier stands. In answer to this point we need do no more than to refer to what we said in our opening argument. We think we have clearly shown that boats never did run where the pier stands, unless it was an exceptional case in time of very high water, because

1. The rocks and boulders which originally lay there, made it impossible so long as they remained.

2. Because the original bank of the river, prior to the erection of Atlee's mills, extended out almost to the point where the pier now stands.

3. Because, after the mills were built, the space about where the pier now stands was almost continually, during the boating season, occupied by rafts of logs.

These facts which make it quite impossible that the spot where the pier stands should ever have been regarded as a part of the channel, are not refuted or contradicted by any evidence in the case, nor was any attempt made by libellant to contradict them.—Add to this the fact that it is necessarily a difficult thing, to say precisely where a boat was run ten or twenty years ago, before there was any change in the bank of the river, and before the boulders and other obstructions were removed, and we submit that the proof is clear that the place where the pier stands was never regarded as within the channel.

V.

Some of the libellant's witnesses expressed an *opinion* that the pier is in the channel, and is a nuisance, and an obstruction. It is not for these witnesses, but for the Court to say what is, and what is not a nuisance, or an obstruction. This testimony is clearly incompetent, and we are surprised that counsel should quote it, and rely upon it. If it were material there could be found in the record the testimony of a number of expert witnesses who express the contrary opinion. But it is not a question to be settled by experts. The *facts* are to be made to appear; the situation of the pier with reference to the locality, width and course of the channel, is to be shown, and from these facts, the Court will say whether, as matter of law, the pier is a nuisance. It may be

observed, however, that no accident except the one which forms the subject of this suit, has ever occurred at said pier, and that the pilot Goll, who run the Phil Sheridan upon the pier, was manifestly either ignorant of the locality of the wide and deep channel extending 600 feet out towards the Illinois shore, or criminally careless and reckless. To say that there is danger of running upon said pier with this wide plain channel outside of it, and where a boat must necessarily turn out of its course to strike the pier, is to assert that which all the facts proven in this case clearly disprove.

VI.

Counsel endeavor to break the force of the testimony of the Civil Engineers, Worrall and Heath, and of their maps and drawings, but we think without success. That these surveys were made when the water was very low, does not render them one whit the less accurate and reliable. On the contrary, that was the best time to make the survey, because the shape, position, and extent of the gravel bar, the character of the bed of the river and the exact locality and width of the channel, could at a low stage of water be distinctly and clearly ascertained and described. We are glad that counsel have called special attention to these maps, for they demonstrate the correctness of our position by showing conclusively *that the shore side of the channel is twenty feet outside of the pier*. This is not the testimony of a partisan witness, but of Engineers who stand high in their profession, and who testify to the result of actual measurement and surveys.

VII.

In attempting a defense of the competency of the pilot in charge of the Sheridan, counsel say, that although he had not been in

that navigation for a year, he "had the right to assume that the river was as theretofore, free and clear of all artificial obstructions." We have always supposed it to be the duty of a pilot after a long absence from a particular navigation, to inquire for changes or obstructions which may have come into existence during his absence. But let us assume that the reverse is the correct position. *What right had this pilot to assume that there were no rafts of logs or lumber in front of Atlee's mills, about where the pier stands?* If he did not know of the pier, or was not bound to know of it, he certainly did know that ever since the erection of the mill it was a common thing to leave log rafts in that very spot, and that the way to avoid them was to keep in the wide deep channel, out near the centre of the river. The fact is, this pilot did not know where he was, or else did not care.

VIII.

We are asked by counsel for respondent, this question:

"Do counsel seriously claim that navigation can be limited, or restricted *at all times* to the navigable channel of the river *as it is at very low water?*" We answer in the negative. What we insist upon is that the riparian proprietor has a right to build out to the navigable channel, and there to make a wharf or landing or pier, *provided he does not materially obstruct navigation by so doing.* If the stream be a small one and the navigable channel at low water is narrow and difficult, it may often happen that the structure which would communicate with that channel at very low water, would endanger navigation. But this question does not arise in this case because the channel of the Mississippi at the point in question is not narrow or difficult even at the lowest stage but is in fact both wide and deep. Upon this point there is no doubt, and it is perfectly clear that no harm can come to the ordi-

narily prudent mariner, from the existence of this pier, because a channel 600 feet wide and very deep is left open to him, and is not encroached upon to any extent.

IX.

Counsel for libellant quote authorites in support of the general rule that a navigable river is a public highway, and may not be obstructed without legislative authority. This general rule is not questioned. We only claim that it is subject to the exception or modification for which we contend, viz: that the riparian proprietor has a right to connect his land with the navigable water, provided he can do so without materially obstructing navigation.

We insist that the case of Yates vs. Milwaukee, most clearly establishes this exception. It does not abrogate the common law rule which is referred to and emphasized by counsel, but it does establish another which forms an exception to that rule, and one which is necessary to the protection of the rights of riparian proprietors. Counsel substantially admit our position when they say:

"The courts have, however, held that riparian proprietors upon bays, lakes and navigable rivers have a right, although their title extends to high water mark only, to use the *shores* and the *shallow water* beyond the shore, *as far out as the navigable part* of the bay, lake or river, and have allowed them to *communicate* with the navigable portion of the same, thus giving them the benefits naturally resulting from their ownership of lands on navigable waters."

This is a correct statement of the law except in so far as it is to be inferred from it that the riparian owner can only use the "shallow water." How are we to define "shallow water" and "deep water?" Water an inch deep is shallow, and for some purposes,

as for the purposes of navigation, we would call water five feet deep shallow water. This is not the true test of the rights of the riparian owner. The true test is given in Yates vs. Milwaukee. He has a right to avail himself "of the advantages of the navigable channel, by building wharves and docks to it for that purpose." If in order to secure and enjoy this right he must build out to deep water, or even in deep water, he is at liberty to do so, if thereby no material obstruction to navigation is caused. This is necessarily so, for the reasons urged by us in our opening and so ably set forth in the opinion of the District Judge in this case. It is clearly established, not only by Yates vs. Milwaukee, but also by Dutton vs. Strong, (1 Black 1) cited by libellant. In this latter case a pier or landing place built by a private party, for his own use, and "extending several hundred feet into the waters of the lake," was held by this Court not necessarily a nuisance.

X.

The cases cited by counsel as analagous to the one at bar are not analagous.

It is perhaps sufficient to say that in no one of them is the question of riparian rights presented or discussed. They are ordinary cases of the obstruction of navigable streams or public highways without sufficient necessity or authority. They do not touch the question presented in this record which is, as we have seen, whether the structure in question was proper and appropriate as a means of connecting the mill and land of respondent with the navigable waters of the Mississippi.

XI.

Counsel do not correctly state our position when they represent us as contending that "a riparian proprietor may use whatever

portion of the navigable channel he pleases, provided he leaves a reaso able space for the passage of boats." We have taken no such position, nor did the District Judge lay down any such doctrine. What we claim is, that the "line of navigability" cannot be exactly fixed, because it is at one point in high water, at another when the water is at a medium stage, and at still another at low water, and because also it is at one point for very large vessels, at another for those of medium size and draft and at still another for small ones. And therefore [illegible] that [illegible] the structure of respondent should be h[illegible] and *slightly* beyond what the Court would deem the line [illegible] navigability for ordinary vessels, under ordinary circumstances, yet if necessary to the enjoyment by respondent of his mill property, it is not to be held a nuisance or an unlawful structure, provided it is not an actual and material obstruction to navigation. And while we take this position with great confidence, we also insist that as a matter of fact the pier in question does not extend even *slightly* beyond the line of navigability, or the line of the navigable channel of the river, within the ordinary meaning of those terms.

The rule for which we contend will prove a complete and ample protection to the great interests of commerce and navigation, while at the same time it will afford that protection to the great and growing interests of riparian proprietorship, which common justice to individuals, as well as the public interest demands.

Respectfully submitted,

McCRARY, MILLER & McCRARY,

for Appellant.

In reply to what is said by counsel for appellee in relation to the act of Congress of March 3, 1873, "for the protection of owners of saw mills on the Mississippi river," we submit the following suggestions:

1. The act in question does no more than to embody in the form of a statute the law as it was settled by the decisions of this Court made prior to its passage. It recognizes and guarantees the right of mill owners to "build piers or cribs in front of their mill property, on the banks of the river, for the protection of their mills and rafts against damage by floods and ice." This right is given, coupled with the qualification that such piers shall not "interfere with or obstruct the navigation of said river." Of course this means the navigation of the river by the passage of vessels and crafts up and down it, in the usual and ordinary course of the business of navigation. It does not mean that no such pier or crib shall be placed in water which may, at some stages of the river, be deep enough to float a steamer, or in a place where it might *by possibility* be struck by a vessel when such vessel is turned out of its usual and proper course.

2. The power reserved in said act to direct the removal of any pier in case *by reason of the shifting of the channel*, or from any other cause it shall be found to obstruct the navigation of the river, shows that Congress recognizes the distinction between the river, and the channel of the river, and that the purpose of the act is not to forbid mill owners to put piers in the river, (for that it expressly authorizes) but to keep the channel, that is, the part of the river which is used for the passage of vessels, free from obstruction.

3. Counsel claim that under the act in question, piers or cribs must be built "on the banks of said river," but this is clearly a misconstruction of the words of the act. The piers or cribs are to be built by mill owners "in front of their mill property on the banks of said river." It is the *mill property*, and not the piers or cribs, that are to be on the banks of the river. The *property* of the riparian proprietor or mill owner, extends at least to high water mark for all purposes. Piers built in front of such property are necessarily in the river. It would be very absurd if any land owner should apply to Congress for permission to build a pier or crib on his own land, and, if possible, still more absurd for Congress to pass an act granting him such permission.

4. The fact that the act in question employs the terms "pier or crib," proves that a structure *in the water* was contemplated, and proves also that the theory of appellee that a mill owner may build such structures no where in the river, is not recognized, but is contradicted, by the action of Congress. A pier, says Webster, is "a mass of stone work or a mole projecting into the sea (river) for breaking the force of the waves and making a safe harbor."—Such a structure is necessarily in the water, and must frequently be in water of considerable depth.

5. The act in question is cited by counsel as showing "legislative interpretation of the law." For the same purpose we cite it, and rely upon it. It is declaratory of the law as we hold it, and as we insist it stood, when the pier in question was erected and when the accident complained of occurred. The appellee claims, and its whole case rests upon the claim, that a riparian mill owner can not erect a pier anywhere in the river, in front of his mill, where the water is deep enough to float a steamboat;—that all such water belongs to the navigator. The act in question shows

that Congress does not recognize this as the law, because the act permits piers to be erected in the water in front of mill property *in such manner as to afford protection to mills and rafts against damage by floods and ice.* Such a structure must of necessity be placed in water, which, during a great part of the year, and at some points during the entire year, is deep enough to float a steamer.

McCRARY, MILLER & McCRARY,
for Appellant.

Supreme Court of the United States.

OCTOBER TERM, 1873,

SAMUEL ATLEE, *Appellant*,
vs.
THE NORTH WESTERN UNION PACKET COMPANY.
No. 600.

REARGUMENT FOR APPELLANT.

The order of the court directing a reargument in this cause is as follows:

"Ordered by the court that this cause be reargued on the question whether the damages shall be apportioned, both parties being in fault."

I have to submit upon this question the following suggestions:

It having been determined by the court that both parties are in fault, the only remaining question is, Shall the damages be determined by the rule of the common law, or that of the admiralty?

The rule of the common law is that the libellant cannot recover if his negligence contributed to the injury.

The Gen. Steam Nav. Co. *vs.* Mann, 14 C. B., 127.
26 Eng. L. and Eq., 339, 341.
1 Parsons Shipping and Admiralty, 526, Note 1.
Halderman *vs.* Beckwith, 4 McLean, 286.
Kesee *vs.* Chicago & N. W. R. R. Co., 30 Iowa, 78.
Railroad Co. *vs.* Gladden, 15 Wall., 401.

The rule in admiralty is, that when both parties are to blame the loss is equally apportioned between them.

Vaux *vs.* Shetfer, 8 Moore, P. C., 75.
Story on Bailment, sec 608.
Lucas *vs.* Steamboat Thos. Swann, 6 McLean, 282.
1 Parsons Shipping and Admiralty, 525 *et seq.*

"Where both parties are to blame, the loss is equally apportioned between them, *although one may be much more at fault than the other.*" Same vol., p. 527, note 2, and many cases there cited.

This rule has also been adopted by this court. The Schooner Catharine *vs.* Dickinson, 17 How., 170, 177. Rogers *vs.* Steamer St. Charles, 19 How., 108. Cushing *vs.* The John Fraser, 21 How., 184, 195.

I shall endeavor to maintain—

1st. That the admiralty rule must govern in the determination of this case.

2d. That, if I am wrong in this, and the common law shall be applied, the finding must be for respondent.

I.

I am not aware that this court has ever applied the common law rule as to damages, to the decision of a case of collision, brought by libel in admiralty, and it would seem to be clear that if the facts are such as to bring the case within the admiralty jurisdiction, it ought to be decided by the rules which govern the courts in admiralty cases. To contend that, because this was not a collission between two vessels in motion, but between a vessels and a pier, the common law rule should prevail, is an argument against the jurisdiction of the court. For if the common law rule prevails in deciding the case, why is it not a simple case of damages under the common law, and therefore not a proper case for an admiralty court at all? The argument

therefore, since it proves too much for the libellant, may be regarded as proving nothing. I have found no case reported in which the collision was between a vessel and a pier, but cases are numerous where the collision was between a vessel in motion and a vessel at anchor, or at its mooring, either at the shore or in the channel. I am unable to see any good reason for a distinction between this case and a case growing out of the collision of a passing vessel with *any* stationary object in the edge of the river. Whether the object collided with be a vessel at anchor, or at its mooring, or a dyke, pier, or other structure, built by the riparian owner, for his own accommodation, the rule as to damages must be the same; if there is a distinction it is this: that the mariner should be held to know the exact locality of a pier which has stood for a considerable time in the edge of the river, while, if a vessel were anchored in an unusual place, he could not be held to knowledge of the fact, and could only be held in fault for running upon such vessel, if he failed to keep a proper look out. This distinction, however, may well be urged in respondent's favor. I know it was urged by libellant that the pilot in charge of the Phil Sheridan was not aware of the existence of the pier, and that fact was proven, but I insist that he was *bound* to be aware of all permanent structures along the shore upon which a vessel might strike, and his ignorance is no excuse, but rather an aggravation. A pilot may not be permitted to find structures, such as bridges, piers, dykes, &c., along the river *by running his vessel upon them.* He must know the channel, and the shore, and, indeed, the whole river, before he undertakes to pilot a steamer laden with precious lives, and valuable property, along its course.

Before proceeding further, I desire again to call the courts attention to the *facts*, and this I can best do by repeating what was said in respondent's petition for rehearing. My object now is not simply to show that both par-

ties were in fault—for that is settled—but to show that the pilot and officers of the Phil Sheridan were *chiefly* to blame, and that but for their palpable negligence the accident could not have happened.

In order to affirm the judgment below this court must find from the evidence that the officers who ran the vessel upon the pier were not guilty of negligence. Will the evidence warrant this finding? A brief reference to the facts proven will show that it will not. The officers in charge of the vessel were at fault.

(A.) It is certainly clear that at the time of the collision the vessel was entirely out of the ordinary channel, and in a place where no boats had run for many years, if ever, and this, without the least excuse or justification, because there was, at that point, a wide, deep channel far outside of the pier. To use the language employed by Judge Love, in his opinion, "the proof is satisfactory that there was a wide expanse of deep, navigable water beyond the piers; that the stress of the current was beyond that point, and that the usual and ordinary track of boats had been some distance east of the log rafts *and of the piers*."

And Judge Dillion, who decided the other way, stated in his opinion the same fact in these words, "outside of this pier there is a free passage way for boats, several hundred feet in width." Page 256, printed record.

No witness has testified that the vessel was in the ordinary and proper channel when the accident occurred.

The testimony of the following witnesses shows that the pier was entirely out of the usual and proper channel for vessels, and that, therefore, the vessel was out of the proper route:

Wm. A. Griffey,	printed record,	page	227.
A. B. Woodward,	do.	do.	206.
C. B. Beard,	do.	do.	233.
Wm. A. Dustin,	do.	do.	235.

J. W. Campbell, printed testimony, p. 201.
B. W. Davis, do. do. 182.
John Atlee, do. do. 187.
E. G. Wilson, do. do. 210.
Ferdinand Kiel, do. do. 215.
R. H. Heath, do. do. 211.
E. H. Worrall, do. do. 246.

And the court is asked to examine the *maps* filed by the last two witnesses as part of their testimony, and for some reason not printed. They are important, as these witnesses are shown to be competent civil engineers, one of them (Worrall) being a Government engineer, employed upon the Des Moines Rapids improvement. The maps were made from *actual measurement*, and show the exact position of the pier with relation to the shore and the channel. The original argument for appellant was prepared before the printing of the evidence, and reference was there had to the original transcript. The absence of these maps from the printed record is especially called to the attention of the court, and their examination requested, because they are deemed very important. They will be found at pages 711 and 860, respectively, of the *original* record.

(B.) It is also quite clear from the evidence that the rafts of logs belonging to appellant, have, for many years, occupied the space where the pier now stands, or extended beyond it, so that any pilot, familiar with the river at that point, must have known that vessels did not usually run there, and that it was dangerous to attempt to do so. Upon this point it is submitted that the proof is clear. See testimony of John Atlee, original, page 187. J. W. Campbell, 201, 210. Hiram Finch, 213. F. Kiel, 215. John Scott, 217. Peter O'Kell, 219. S. Atlee, 222. W. A. Griffey, 227. P. Cowles, 236. Thos. W. Wright, 242. Milo A. Pendon, 243. And there is no testimony to the contrary.

3. The collision, therefore, was caused at least in part, by the steamer not having been kept in the usual channel. It resulted from the negligence or incompetency of the pilot, in running her *out of the proper course, and into a place where he was bound to know boats did not usually, and could not safely, run.* That this was negligence, will appear by reference to the following authorities:

Ure *vs.* Coffman *et al*, 19 Howard, 56.
Rogers *vs.* Steamer St. Charles *et al.*, 19 Howard, 108.
New York and Virginia Steamship Company *vs.* Calderwood, 19 Howard. 241.
The Granite State, 3 Wall., 310.
The Bridgeport, 14 Wall., 116.

In Ure *vs.* Coffman it is said:

"The collision, according to the pilot's account of it, was caused by the steamer not having been kept on a course further out from the bank. That, of itself, is sufficient to make her answerable for all the consequences of it, without any regard to the fact that the flatboat had not a light." And it was there held that the flatboat which was run into while tied up at night, was not bound to keep a light, because "*she was actually fastened to the bank, out of the line of a customary and safe navigation up or down the river.*" P. 63.

No rule is better settled, and few are more salutary and important, than this—that it is negligence to run a vessel plying upon any of our rivers out of the customary channel. The degree of negligence may depend somewhat upon the width of the customary channel and the difficulty of keeping within it. If it be narrow or tortuous, there might be greater difficulty in keeping within it, and less culpability for getting out of it. I insist that to leave a deep, well-known channel six hundred feet wide, and

steer toward shore, so as to strike a structure which had stood at the edge of the channel several years, and in a space almost always occupied by rafts, is nothing less than *gross* negligence. Why, then, should any other than the ordinary admiralty rule in relation to damages be applied in this case?

The following cases are referred to, and upon examination I think they will be found to be substantially analagous to the one at bar:

1. Ure *vs.* Coffman, already cited. Here a flatboat was tied up at night. Like the pier in this case, it was in water deep enough for a steamer, and was without a light. And the steamer in that case, like the Phil Sheridan in this, was "out of the line of a customary and safe navigation up or down the river." The cases are in all respects parallel, except that in the one case the steamer ran upon a flatboat when tied up, and in the other case a steamer ran upon a pier. In that case the steamer was held so entirely in the wrong that the damage was not even divided.

2. Lenox *vs.* Winnisimet Company, 1 Sprague's decisions, 160. This was a collision between a vessel moving and a vessel at anchor. The former was held in fault for being out of her proper and usual course, and for not using her best compass to guide her way; the latter was also held in fault for having no light, and the damages were apportioned.

3. The Schooner Marcia Trebou, 2 Sprague, 17. Here the collision was between a schooner going out of the harbor and a sloop at anchor *in the channel.* Both vessels were held at fault and the damages apportioned. The court declared that the sloop was anchored "in an improper place," and that it was negligence to anchor her in the channel. "I am further of opinion," said the judge, "that the schooner was also in fault in not avoiding the sloop, *notwithstanding that she was anchored in an improper place.*" Certainly there could hardly be a clearer case of negli-

gence than was here presented against the parties in charge of the sloop, who anchored her in the channel instead of placing her out of the way of passing vessels. But this negligence of one party, however gross, was not allowed to excuse the negligence of the other.

4. The Bridgeport, 7 Blatchford, 361. This was a case of collision between a passing steamer and a vessel "moored to a wharf or bulkhead, and some twenty-five or thirty feet from its outer extremity." Although the night was very dark and foggy, the steamer was held in fault for not keeping further from the New York shore. She was out of the usual route, and therefore in fault. The court in this case said that "when a steamboat runs into or against *a wharf in a port*, or a vessel moored thereto, there is a *presumption* of negligence on her part." The same case had been decided in the same way by the district court for the eastern district of New York. The judge of that court, in the course of his opinion, observing that "prudence, to say nothing of the State law, required them (the officers of the steamer) in such a fog to take a course which would bring them *in the middle of the river* below the Hook." (1 Benedict, 65.)

5. The Vanderbilt, 6 Wall., 225. A collision between a steamer and a canal boat. The steamer was held in fault for being, at the place of the collision, out of "the usual pathway of steamers ascending the river." She was in the west side of the channel, when custom required her to take the east side.

6. The Favorita, 8 Blatchf., 539. A collision between a steamer coming up the river and a ferry boat, just as she cleared her slip at Brooklyn. The steamer was held for the whole of the damages, and upon the ground that she ran too near the shore and without proper caution. The court say: "Had the Favorita kept suitably distant from the shore, her speed was, no doubt, unobjectionable, and it

is therefore her *path* and not her *speed* which condemns her."

7. The following cases abundantly show that when from necessity, in order to make a landing, or for any other cause, a vessel leaves the usual pathway and enters a place where vessels do not usually go, and where there may be danger, she is bound to exercise great caution, and keep herself, both as to rate of speed and course, entirely under control:

The Allegheny, 9 Wall., 522.
The Corsica, 9 Wall., 630.
The City of Paris, 9 Wall., 634.

I venture the assertion that no case can be found in which it has been held that a steamboat passing down a stream like the Mississippi, can turn out of a wide, deep channel where vessels are accustomed to run and venture into a place where, for many years, obstructions, such as rafts of logs or piers, are known to have existed, without being held guilty of such negligence as to make her owners responsible for *all* the consequences, not to say a mere moiety of the damages, resulting.

II.

But suppose the rule of the common law be applied; does it follow that libellant must recover? By no means, but exactly the contrary. What I have already said as to the negligence of the pilot and crew of the steamer Phil Sheridan in failing to keep a proper look out, and in running the vessel far out of the ordinary channel and into a place known to be dangerous, because long known to be occupied by rafts of logs and lumber and by the piers, applies here, and need not be repeated. Can there be a doubt that the conduct of the pilot and the crew amounted to *contributory negligence*? If it did, then, according to the rule of the common law, libellant can re-

cover nothing. What is contributory negligence? Said Lord Campbell, in the Gen. Steam Nav. Co. *vs.* Mann, *supra*, "according to the rule which prevails in the court of admiralty in a case of collision, if both vessels are in fault, the loss is equally divided; *but in a court of common law, the plaintiff has no remedy if his negligence, in any degree, contributed to the accident.*"

The rule is thus stated by the Supreme Court of Iowa in Kessee *vs.* The Chicago and N. W. R. R. Co., 30th Iowa, 83, "where a plaintiff has, by his negligence, contributed to a loss, he cannot recover therefor."

There may be room for dispute as to the precise degree of negligence on the part of a plaintiff, that will amount to contributory negligence in the sense in which these terms are used in the law; but it is certain that a mere preponderance of negligence against the defendant is not enough. (2 Parson's on Contracts, 681.)

In a case where but for the negligence of the party injured no injury would or could have been done, it must be held that there was contributory negligence on his part. And this is precisely that case. The proximate cause of the accident was the ignorance of the pilot concerning the existence of the piers, and his carelessness in turning out of the ordinary channel of vessels. This court has defined contributory negligence to be "the absence of reasonable care and caution on the part of one seeking to recover for an injury." Railroad Company *vs.* Gladden, *supra.*

No argument can be necessary to show that there was an utter absence of reasonable care and caution on the part of the pilot and officers of the Phil Sheridan, at the time of the accident. More than this might well be claimed, but not less.

Respectfully submitted,

GEO. W. McCRARY,

For Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1873.

SAMUEL ATLEE, *Appellant*,
vs.
THE NORTHWESTERN UNION PACKET CO., *Appellee*.
No. 600.

REPLY TO RE-ARGUMENT OF APPELLEE.

It seems to me unnecessary, if not improper, to repeat what was said in the original argument of this cause.

By reference to that argument, on both sides, it will be seen that the question as to which party was chiefly in fault when the accident complained of occurred, was argued at length. It was contended by appellee that appellant was in fault, because the pier stood in navigable water and had no light upon it. It was contended by the appellant that the pilot and officers of the steamer were in fault for the following reasons:

1. The pier was not *in* the channel, but only extended *to* it.

2. The space where the pier stood was and had long been devoted to the use of the riparian owner, and occupied for some time by the pier, and for a much longer time by rafts of logs and lumber.

3. The steamer was far out of the ordinary channel, and in a place where no vessel had gone for many years, if, indeed any vessel ever ran there, and there was a wide, deep channel outside of the pier which vessels were in the habit of traveling.

These points were all fully discussed on both sides, and the case submitted to the court. The order of affirmance

was made, the judges being equally divided in opinion, but this order was, upon the filing of a proper petition, set aside, and we were directed to reargue "the question whether the damages shall be apportioned, both parties being in fault." We are not directed to reargue the question whether both parties *were* in fault. We are simply to discuss the rule as to damages in a case of this kind where both parties are found to be in fault. As counsel for appellee have said very little upon this question in their argument, I shall make my reply very brief

I shall not follow them over the ground already fully covered in the original arguments. I discover nothing new in the reargument upon the points discussed originally, and nothing upon those points which has not been fully answered. I shall, therefore, confine myself to what counsel have said upon "the question whether the damages shall be apportioned, both parties being in fault."

I.

It is insisted that this is not a case for apportionment of damages, because the pier "was a willful obstruction of a navigable stream." In the first place this proposition begs the whole question of fact. Of course it is not conceded that the pier is an obstruction to the navigable stream at all; and the assumption that it is a *willful* obstruction is wholly unwarranted by the evidence. It has been shown, I think, very clearly that the pier was a proper structure, necessary for the enjoyment by the riparian owner of his mill property, and that it extended only to the channel and did not, in any proper sense "pass the line of navigability." But, in the second place, I submit that no negligence on the part of the appellant can excuse the negligence of the pilot of the Phil Sheridan in running the vessel so far "outside of the ordinary channel," and into a place where he was bound to know he would find obstructions and meet dangers.

II.

Counsel contend, on page 5 of their argument, that the common law rule as to damages cannot be applied to a case in admiralty like this, growing out of an alleged marine tort. For the sake of the argument let this be admitted. The admiralty rule then must apply, and according to that rule the damages must be apportioned, if both parties are to blame. Nor will the Courts enter into an inquiry to determine whether one party is more to blame than the other. This rule is only qualified by the proposition that the "court of admiralty *might* qualify the rule where the fault was *vastly* greater on one side then the other." 1 Parson's Shipping and Admiralty, p. 527. It cannot, I am sure, be seriously contended that there is any such *vast* preponderance of negligence on the part of appellant, as is required in order to subject him to the payment of the entire damage. On the contrary I think it has been shown that the preponderance is the other way.

It is contended that this is not a case of collision, and that the authorities concerning such cases have no application to it. Of course it was not a collision between two vessels but I insist that it is entirely analagous to a case of collision between a vessel in motion and another at anchor or otherwise stationary, provided the stationary vessel occupied a position with relation to the ordinary channel, ismilar to that occupied by the pier in question, at the time of the accident. Whether the stationary object be a pier or a vessel can make no difference, and in this view, the cases of collision cited by me *are* in point. They clearly show that, although the stationary vessel may be in a place where it has no right to be, and may also neglect to keep a light, yet this is no excuse for the negligence of the officers of the vessel in motion in leaving the ordinary course. It is said that in all these cases the vessels were rightfully within navigable water, and that the pier was wrongfully

there, but a vessel at anchor *in the channel*, at night, without a light, is not rightfully there, and yet if such a vessel is run upon carelessly and negligently by a passing steamer both are at fault and the damages are apportioned.

Therefore, if I were to concede (as I do not) that the pier was wrongfully extended a few feet too far into the river, that is, beyond the line of navigability, still the negligence of the person erecting it would be no greater, and not as great, as that of the persons running the vessel out of her course, and against it.

III.

Counsel insist upon rearguing the questions whether appellant was in the habit of keeping rafts of logs and lumber where the pier now stands, and whether the Sheridan was out of the usual course of vessels before the piers were built. Upon these questions I must content myself by referring to the original arguments. I will only add to what I have already said, that if anything is made clear by the evidence in this case, it is that for many years the space about where the piers stand *has* been occupied a great part of the time by rafts, and the usual course of vessels has been very far outside of that point. The statement of counsel (page 11) that "there can be no doubt that the Sheridan, when the accident occurred, was within the usual route of boats before the erection of the pier," is to my mind a most extraordinary statement, to say the least.

The claim that the pilot was, or may have been, "prevented from proceeding farther out in the stream," is wholly unsupported. The pilot claims nothing of this kind, and it is perfectly clear that there was nothing to prevent him from taking the usual and ordinary course along the wide, deep channel, and that nothing did prevent him so doing but his own ignorance, negligence or stupidity.

Counsel again array their pilot witnesses, (page 13,) and insist that they testify that the pier was in the usual channel of vessels. That these are willing witnesses is certain, but the clear proof by persons residing in the immediate vicinity, that *this space has for years been used and occupied as a log and lumber harbor*, fully disproves their assertion that it was used as an ordinary steamboat channel.

Counsel for appellee assert that appellant was a trespasser—a wrong doer—and that he had no right to build his pier where it stands. He had as much right to erect a pier in front of his mill as the mariner has to navigate the river. If he passed the line of navigability with his structure, he was to that extent in the wrong, but if that line be fixed, as I think it must be, at low water, then I am sure the evidence is quite clear that he did not pass it. At the most he passed it but slightly, and did not materially interfere with the navigation of the river.

I conclude, therefore, that the worst that can be justly asserted is, that both parties were at fault, and that, therefore, the damages must be apportioned.

Respectfully submitted.

GEO. W. McCRARY,
For Appellant.

In the Supreme Court

Of the United States.

THE NORTH WESTERN UNION PACKET CO.
Appellee.

vs.

SAMUEL ATLEE,
Appellant.

IN ADMIRALTY

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

ARGUMENT OF COUNSEL FOR APPELLEE.

This action was brought by the North Western Union Packet Company, libellant, against Samuel Atlee, respondent, to recover damages for injuries resulting to the barge, Jack Reaney, from a collision with a pier constructed by the respondent in the Mississippi river.

Before proceeding to consider the three propositions submitted by counsel for appellant, in their printed argument, we desire to make a brief statement of the facts of the case as we claim they are established by the testimony.

STATEMENT OF FACTS.

The respondent is the owner of a saw mill situated on the bank of the Mississippi river below Fort Madison, Iowa. In the winter of 1870,—'71, he, for his convenience in carrying on his mill busi-

ness, constructed two piers in the river adjacent to his mill. These piers are about five hundred feet apart. The upper pier is the one with which the barge collided, and to which the testimony refers.

The respondent had previously, during the summer of 1870, placed in the river a pile of stone, called by the witnesses a "rock pile," which was covered with water when the river was high, and when the river was low, was partly exposed to view. The upper pier was constructed by building on this rock pile a crib which was filled with stone.

The pier is about twenty five feet high above the bed of the river on the outside, and about twenty feet on the inside; is twenty nine feet long, and twenty two feet wide. At a low stage of the river, the water at the upper outside corner of the pier is twelve feet deep, at the upper inside corner is seven and four tenths feet deep, at the lower inside corner is eight feet deep, and at the lower outside corner is ten and seven tenths feet deep.

At the time the collision occurred the water at the upper outside corner, the corner against which the barge struck, was twenty feet deep, and was not less than fifteen feet deep on the inside of the pier. This upper outside corner is one hundred and forty nine feet from the bank of the river, and is over one hundred and twenty two feet from the shore at the stage of water which prevailed on the night of the collision. At low water, this upper outside corner of the pier is ninety nine feet from the shore.

About seven hundred and fifty feet above the pier is a gravel bar, formed by washings from a creek, called French's creek.—The extreme point of this gravel bar extends about three hundred and forty one feet from the bank into the river, the bank receding

considerably at this point, but is only about two hundred feet from a line drawn straight from the shore of the river above to the shore below the gravel bar. It is an almost perfectly flat bar.—When the collision occurred, the river was at a high stage, and the water on this gravel bar was between six and eight feet deep.

The steamboat Phil Sheridan, which had the barge in tow, drew less than four feet when light, and over four feet when loaded, and could have passed over any part of the gravel bar on the night of the accident. At a distance of several hundred feet in the river from and opposite the gravel bar and the pier, is a long sand bar, the effect of which is to turn the current of the river towards the pier and the Iowa shore.

At a low stage of water, *when the gravel bar is bare,* the effect of the gravel bar is to turn a portion of the current at this point out into the river, but the general direction and force of the current is towards and along close to the Iowa shore until it reaches a point below the lower pier, where it crosses over to the eastern or Illinois shore. There is a bend in the river extending from Ft. Madison down to a point below the lower pier, making the shore of a crescent shape.

The collision occurred about eleven o'clock on the night of April 23d, 1871. The steamboat Phil Sheridan, was proceeding from St. Paul, Minn., to St. Louis, Mo., having the barge Jack Reaney in tow, lashed to her starboard side. While coming down the river from Ft. Madison, and when about two lengths of the boat above the upper pier, the pilot saw some thing dark in front of the boat in the channel, and rang the bell to stop the boat and then to back the boat, but before the boat could be backed, the barge struck the pier.

The pilot in charge of the Sheridan, who was one of the oldest and most skillful pilots on the river, had no knowledge of the existence of the pier. He had piloted boats past Ft. Madison during the entire year of 1869, but between that time and the time of making the trip on which the collision occurred, he had passed Ft. Madison but twice, once up and once down, and was off watch and asleep both times.

The navigation season for through boats, that is, boats running between St. Louis and St. Paul, of which the Sheridan was one, had just opened, and the Sheridan was making her first trip of that season.

The night was dark and there was no light on the pier. There was no raft in the neighborhood of the mill, only a few loose logs lying by the shore, and nothing near there to obstruct the passage of boats from Fort Madison down to the pier.

The respondent, when he had rafts near his mill, had, previous to the collision, been in the habit of keeping lights on them in the night. These rafts had generally lain above the place where the pier now stands, near the gravel bar; sometimes, he had had rafts below the lower pier, and sometimes he had kept logs in the space between where the pier stands and the shore, but not many. These rafts had varied greatly in size; sometimes he had large rafts and sometimes very few logs.

The pilot in charge of the Sheridan and many other pilots had frequently navigated boats over the place where the pier now stands, both at high and low water, and the water had for years been navigable at that point and even inside of the pier.

The side and bottom of the barge were crushed in by the collision and it was floated down below the lower pier, where it sank in

a few minutes. The barge was afterward repaired in part, but the cargo box or roof and the inside lining or dunnage were so badly injured that they were taken off, and were not used again. The barge also received other injuries which could not be repaired.

The District Court held that both parties were in fault, the respondent for failing to keep a light on the pier, and the libellant for not navigating its boat more in the middle of the stream; and that the damages should be divided between them. The Circuit Court decided that the pier is in the navigable channel of the river, and therefore a nuisance, and that respondent should be held liable for all the injuries sustained by the barge, and decreed accordingly.

I

The first proposition which counsel for appellant seek to establish is: "That the structure on which libellant's barge collided is not within the ordinary navigable channel of the river, and therefore not a nuisance."

We shall endeavor to show that the pier is not only within the *ordinary* navigable channel of the river, but is within the navigable channel at the very lowest stage of water.

1. The testimony of our witnesses, as well as that of most of respondent's witnesses, shows that there is deep water at all times both on the outside and inside of the pier.

One of respondent's witnesses, E. H. Worrall, who made a survey and measured the depth of the water at the pier, and who made the map which is attached to his deposition, testifies that when he made the survey, the water at the upper outside corner of the pier (against which the barge struck) was twelve feet deep;

that it was ten and seven tenths feet deep at the lower outside corner, eight feet deep at the lower inside corner, and seven and four tenths feet deep at the upper inside corner.

(Deposition of E. H. Worrall, original record, p. 844.)

It will be observed that this survey was made when the river was only two feet above low water mark, the lowest water known for a long time on the river. The difference between ordinary low and ordinary high water is from ten to thirteen feet.

(Deposition of W. J. Gorseich, original record, p. 181.)

(Deposition of J. F. Goll, original record, p. 204.)

The same witness, E. H. Worrall, who is employed by the U. S. Government as assistant engineer on the Des Moines rapids between Keokuk and Ft. Madison, in the construction of the canal improvement of the rapids, testifies, (original record p. 851.) that according to instructions from the Government in regard to the rapids improvement, *five feet is navigable water on the Mississippi river.* These instructions are probably based on the fact that the large boats on this river, when loaded, draw about five feet. The Sheridan drew less than four feet when light and over four feet when loaded.

(Deposition of F. DeMers, original record, p. 251.)

(Deposition of Jas. Best, original record, p. 821.)

It appears, therefore, that the pier stands in water that is several feet deeper than is required for navigation of steamboats of the largest size on this part of the river, even at low water.

That the water where the pier stands is navigable, and has for years been considered and treated as such by the pilots on the river is further shown by the testimony of seventeen wit-

nesses, eleven of whom are pilots. They all testify that they have seen *boats pass over the place where the pier stands*, and the pilots testify that they have themselves navigated boats over it.

Deposition of	E. V. Holcomb,	original record,	page	109
"	F. Heisel,	"	"	128
"	C. B. Goll,	"	"	147 148
"	J. F. Goll,	"	"	206
"	J. A. Patten,	"	"	228
"	T. Douglass,	"	"	282 285
"	O. F. West,	"	"	306
"	D. LeClaire,	"	"	312
"	C. Baird,	"	"	322
"	W. Kelly,	"	"	327
"	J. Ruby,	"	"	352
"	A. A. Scott,	"	"	360 364
"	O. M. Ruby,	"	"	367
"	H. G. Carson,	"	"	378 379
"	Chas. Gillaspie,	"	"	454
"	R. B. Hatch,	"	"	461
"	Milo A. Pruden,	"	"	840

This testimony shows that boats have been navigated not only over the place where the pier stands, *but also inside of it*, and at *low* water, and it is corroborated by the testimony of the engineer, Worrall, as to the depth of the water.

2. The testimony of the witnesses shows that the pier stands in the navigable channel at low water.

Most of these witnesses are pilots, and they are *experts* on the subject of river navigation. They make the channel of the river a study, and they all testify that the pier is in the channel.

The channel is several hundred feet wide at this point and the pier stands in the western or Iowa side of it. Counsel, in their answer to our amended libel, admit that it is in the side of the channel, but seem to lose sight of the difference between a pier being in the side of a channel and being *outside* of it. Being in the side of it makes it within the channel, the sides are no less parts of it than the middle. We certainly have not claimed that it is in the middle of the channel. We do claim, however, that pilots have the same right to the sides as to the middle of the channel, and that circumstances often occur which render it necessary for them to use the side of it.

We will refer to the testimony of some of the witnesses on this subject:

1. E. V. Holcomb, (Captain of the Sheridan.) "The channel ran right along by those piers. They stood in the right hand edge of the channel going down stream." (Original record page 108.)

2. C. B. Goll, (Pilot of the Sheridan). "When about the length of the boat above the upper pier, I saw something dark in front of the boat *in the channel*, and I supposed it to be drift. I rang the bell to stop the boat and then to back her, but before the boat could be backed, the barge struck." "The channel runs directly past the piers. They are properly within the channel. I have frequently run directly where they stand in *low* stages of water."

"That was and had been for years the regular channel." In ordinary stage of water, boats can be run within thirty five feet of the Iowa shore, all along there, until you reach the gravelly point above. I have frequently run within thirty feet of the Iowa shore along there in *low* water."

"The pier stands in the edge of the channel." (Original record, pp. 142, 147, 148, 155).

3. J. A. Patten. "The channel of the river was right down where we ran. The pier was located in the channel. (Original record 227).

4. F. De Mers. "I mean to swear that I think the piers in question stand in the best water." (Original record p. 258).

5. T. Douglass. "They (the piers) stand in the edge of the channel, in fact, in the channel in part, at *low* water."

"They (the piers) are both in the channel—the upper one the farthest in." (Original record pp. 283, 286.)

6. O. F. West. "They (the piers) stand either in or right close to the channel of the river, in as good water as there is there.—They stand right where we would run if they were not there. We would get right down where they are." (Original record p. 303.)

7 D. LeClaire. "It (the pier) stands in the channel." (Original record p. 311.)

8. A. Wempner. "They (the piers) are in the channel, I think, as the channel reaches to the shore at that point.

"It (the upper pier) stands to the right of the centre of the channel going down stream." (Original record pp. 315, 316).

9. C. Baird. "They (the piers) are right at the edge of the channel. A man can land a steamboat against either pier at any time." (Original record p.320.)

10. U. Brock. "They (the piers) are on the Iowa side of the channel. The upper one is a little nearer the shore than the lower one, and is set at a sharp point of the shore." (Original record p. 330.)

11. O. M. Ruby. "I should judge it (the pier) stood in the side of the channel." (Original record p. 368).

12. H. G. Carson. "It (the pier) is in a part of the channel. I have seen a great many boats run where pier is and close to shore, and have run there myself."

"The piers stand in the channel. You can run where the piers are at *any* stage of water." (Original record p. 379).

13. John Griggs. "The upper pier, I should say, is in a portion of the channel on the west side or Iowa side." (Original record p. 398).

14. R. B. Hatch. Ques. "How does that pier stand with reference to the navigable channel of the river?" Ans. "It is in it. Have frequently seen boats pass there before piers were built.—They ran right where it is in a fair stage of water." (Original record p. 461).

15. W. R. Slocum. It (the pier) stands, I think, in the right hand side of the channel going down stream." (Original record p. 471).

16. C. P. Beard. (Respondent's witness.) "There is about fourteen feet of *current* inside of the upper pier." (Original record p. 802).

3. That the pier is an obstruction to navigation, see the depositions of these pilots, who also testify as experts on this subject:

Deposition of	C. B. Goll,	original record,	page	148
"	W. J. Gorseich,	"	"	186
"	J. F. Goll,	"	"	209
"	J. A. Patten,	"	"	228
"	F. DeMers,	"	"	253 254

Deposition of	T. Douglass,	original	record,	page 282–3–4
"	O. F. West,	"	"	306
"	D. Leclaire,	"	"	312
"	A. Wempner,	"	"	317
"	C. Baird,	"	"	322
"	W. Kelly,	"	"	327
"	U. Brock,	"	"	332
"	G. W. Duncan,	"	"	340–1
"	J. Ruby,	"	"	354
"	O. M. Ruby,	"	"	369
"	H. G. Carson,	"	"	380
"	John Griggs,	"	"	400
"	R. B. Hatch,	"	"	463
"	W. R. Slocum,	"	"	471
"	Milo A. Pruden, (respondent's witness,)			841

4. The testimony clearly shows that the pier often renders navigation difficult and dangerous.

The current at that point sets in towards the pier. Although the pier had been there but one navigation season prior to the commencement of this suit, steamboats have several times barely escaped collision with it, and rafts have often grazed and struck it.

1. U. Brock. "I have been in danger myself of running against those piers, and have barely escaped doing so even since the lights have been on them. In high water and dark nights, such as we can navigate with safety, we want the shores as land marks to guide us, and any obstruction like those piers makes it hazardous and dangerous." (Original record, p. 333).

2. J. Ruby. "The first knowledge I had of the existence of that pier was from seeing it from the pilot house of steamboat Rock Island on the night of our first trip down, in the spring of 1871.

The night was dark and the wind was blowing. We were running down there in customary way and when about abreast or nearly abreast of this pier, discovered it *and barely missed it with the boat.*"

Ques. "How would it be with a pilot having no knowledge of its existence, descending in night time?"

Ans. "Under the same circumstances under which I discovered it, he would be very likely to strike it. The chances would be even any how."

"At a certain stage of the river between high and low water we mount this reef at a point just above this pier. At this stage of water and in the night, a pilot coming down the river would desire to drop off that reef at that point, and would be in great danger of hitting that pier. Should the wind be blowing down stream or from the Illinois shore, it would increase the danger.—Running in low water stage, arriving at the point where this gravel bar is, in order to overcome the flank movement of the boat, it would be necessary to hold her up toward the reef. By so doing would be liable to get too close to the reef and that would cause her to run from it toward the pier in spite of the rudder."

"A man might endeavor to run in the centre of the channel and get a good ways from it. If he should run in center of channel, of course he would be about one hundred and fifty feet from the pier. Under almost any circumstances it would be the exception instead of the rule, if he got her in center of channel at that particular point." (Original record, p. 353–4–5).

3. H. G. Carson. Ques. "What effect, if any, has it (the pier) upon the perils and dangers of navigation?"

Ans. "A pier in the Missisippi river increases the danger of navigation."

Ques. "State how."

Ans. " Because sometimes, although we may see them, through stress of weather or unmanageableness of the boat, she might be driven against it. In regard to that particular pier, I left Fort Madison last year with the " Lake Superior " with a barge on the starboard side and wind blowing a gale, and *it was with the utmost difficulty I could keep her off those piers.* I had to stop one wheel and work strong on the other one, to pull her away from the piers and shore."

" Descending boats aim to get out as far from it as they can, but they sometimes come very close to it when they have done swingsing and flanking. When the wind is on shore you almost always get close to it. They usually run close to it. Sometimes five and sometimes fifty feet from the pier. There is a difference in boats."

" My custom has been to keep as close to the gravel bar as I could, so as to be heading away from the piers when I got into the bite of the bend."

" There is a bar opposite the bite of the bend, and the tendency of the water is to run off the bar into the channel. *The effect of a boat running any bend is to flank into the bend.*"

"It (the channel) draws in towards the Iowa shore until it gets past the piers." (Original record pp. 380, 383, 391-2-3-5).

4. John Griggs. " *The current of the river sets on the Iowa shore towards the pier.* Steamboats in passing the pier in case of high water or wind are liable to sweep that shore or pier, as a tow boat."

"On one or two occasions I was in great fear of striking the pier in passing it. I was towing barges at the time. I had the steamer "Annie Johnston," and had two or three barges, will not be positive which. If I recollect right, the wind was blowing and she was flanking, so it was *almost impossible to keep her off of it.*" [Original record, p. 398-9.]

5. Chas. Gillaspie. "Have frequently seen rafts pass by there. *The current sets the rafts in towards the pier.* I judge from the way the raft pilots pull to keep them out."

Ques. "To the best of your judgment what effect, if any, has that upper pier upon the perils and dangers of navigation?"

Ans. "For my part I always shun it, and keep out to keep away from it. The boat I am running is a small boat. It is not like a large boat. They swing around and are harder to keep out than a small boat."

Ques. "Suppose wind was blowing towards the Iowa shore, what difficulty, if any, would descending boats encounter at that point?"

Ans. "They would have to hold out pretty strong to keep from coming in contact with the pier." [Original record, p. 457].

6. W. R. Slocum. Ques. "What difficulty, if any, do boats and rafts experience in passing that pier?"

Ans. "A raft has to commence pulling some distance above the pier, in order to avoid hitting it. *The water sets in there very strong.*"

"You must commence to pull, must not wait until you get down there for if you do you will hit it." [Original record, pp. 471, 477].

7. J. F. Goll. "I think the perils of navigation are increased by the erection of said piers. In fact, I know it is."

"*I came very near running the steamboat "Alex Mitchell" over the lower pier in April*, 1871."

Ques. "State whether there is any sand bar between the island and the said piers, and if so, state the extent of it?"

Ans. "There is a sand bar extending near the Iowa shore, which throws the channel of the river close to the Iowa shore and the piers of the mill."

"Said sand bar has a tendency to throw a boat in close to the Iowa shore." [Original record, p. 208–9].

8. F. DeMers. Ques. "What way, if any, are the dangers of navigation of said river affected by said piers?"

Ans. "*There is constant danger of steamboats running against said piers.* The piers being dangerous to navigation even in day time should there be high winds from opposite shore, which winds would carry steamboats against or on the piers." [Original record p. 254].

9. T. Douglass. Ques. "How do those piers and each of them affect the navigation of the river at that place, if at all?"

Ans. "They and each of them are obstructions to navigation of the river, so much so, that on the occasion to which I referred in my last answer, *it was impossible to keep my raft off of those piers, on account of the current setting so strongly against them.*" [Original record, p. 283–4].

10. R. B. Hatch. Ques. "What difficulty, if any, do log or lumber rafts encounter in passing that upper pier? State fully and particularly."

Ans. "In a fair stage of water some trouble. In high water great difficulty. *The natural set of the water is on to the pier.* We have to pull hard to get by it. With a slight wind, it is very difficult. At a high stage of water it takes very hard pulling and a great deal of work to get by it, the water sets in so strongly in the bend above and down that shore." (Original record, p. 461.

11. Milo A. Pruden. (*One of respondent's witnesses.*) "*I don't see how it* (the pier) *can constitute any thing but an obstruction.*"

Ques. "What effect, if any, has it upon the perils and dangers of navigation?"

Ans. "There are times under certain circumstances, when it is liable to sink boats and barges." (Original record, p. 841).

12. C. B. Goll. Ques. "What way, if any, are the dangers of navigation affected by said pier?"

Ans. "The piers are in the channel and there is great danger of boats running on them. Even when lighted, there is still danger, since in low water the channel is narrow and a boat sheering off from the bar on the other side, scarcely has room to avoid them." (Original record, p. 149.)

We have thus shown that the pier is in the navigable channel of the river, and is an obstruction to navigation. These pilots are certainly the most competent witnesses on this subject, and we submit that their testimony is the only really competent testimony in the case, and that there is no evidence on the part of respondent that seriously contradicts it. The pilots, at the wheels of their boats, navigating the river both in high and low water, and when navigation is difficult, certainly know where the channel is, and whether the pier obstructs it. The question is what is the navi-

gable channel for *boats*, and what part of it do pilots need for navigation, and not what engineers, who have nothing to do with either, may think about it.

The respondent, although he could have found almost any number of pilots at Keokuk and other points near there, connected with lines of steamboats running in opposition to libellant's line, called only four, and of these the only one belonging to a large boat, Milo A. Pruden, admits that the pier is an obstruction to navigation. We have the right to infer from this, that there is but one opinion among competent pilots as to whether the pier is an obstruction to navigation, and that, if they had been called, they would have corroborated the testimony of the pilots who have testified in this case. This opinion is well shown by one of them,—D. LeClaire, who, when asked, in his deposition, to state any other matter or thing of benefit to either party in this suit, says: "I know of nothing farther except that *I wish the piers were out of there.*"

Counsel for appellant assert that the pilots who testified in this case were in the employ of libellant. There is no foundation for this statement. The testimony does not show that more than two or three of the pilots, who testified for libellant, were or had been in its employ, but it does show that some of them were or had been in the employ of the "Northern Line," an opposition line of boats.

The witnesses for respondent are, many of them, men in his own employ. They testify that boats usually run from the point of the gravel bar, quartering over towards the Illinois shore, their testimony varying as to the distance which boats run from the pier.—They also testify that they have never seen boats run over the place where the pier stands. We submit, however, that this testimony amounts to very little in comparison with the *positive* tes-

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timony of the pilots who state that they have frequently navigated their boats over the place where the pier stands, and that they make the crossing towards the Illinois shore below the lower pier.

The other witnesses for respondent, except the two surveyors who made the surveys and maps for him, and a few raft pilots and river men, are citizens of Ft. Madison, neighbors and friends, who do not profess to know any thing about navigation or navigable channels.

Since the pier was erected, pilots, of course, keep their boats further out in the stream, if they can. But though they may generally do so, yet circumstances may often compel them to take the *side* of the channel. The wind may be blowing on shore, or a barge lashed to one side of the boat [as in this case] may draw the boat over to that side of the channel, or the boat may through stress of weather become unmanageable, or the night may be dark so that the pilot may vary from his usual course. Either one or all of these circumstances may often render it necessary to use the side of the channel. Moreover, the testimony shows that the water on the western side of the channel, at this point, is as good, if not better, than in any other part of it.

On the night that the collision occurred, the river was at an ordinarily high stage.

Deposition of	C. Baird,	original record, page		320.
"	J. Ruby,	"	"	350.
"	A. A. Scott,	"	"	361.
"	O. M. Ruby,	"	"	367.
"	H. G. Carson,	"	"	382.
"	T. W. Wright,	"	"	830.

C. B. Goll, the pilot in charge of the Sheridan and F. DeMers,

the clerk, testify that on the night of the accident, the pier in their judgment was about three feet above water. (Original record, pp. 146, 154, 251). These witnesses were on the boat at the time and saw the pier that night. Milo Pruden says that he saw the pier a day or two after the collision and that he thinks it was four or five feet above water. R.B. Hatch, who lives at Ft.Madison, states that he thinks it was about four feet above water. And respondents witness, E. H. Worrall, testifies that when he made his survey, the water was twelve feet deep at the upper outside corner of the pier, and that the pier was thirteen feet above the surface of the water. This makes the pier twenty five feet high, and the water being within three or four feet of the top of the pier, it appears that on the night of the collision, the water was at least *twenty* feet deep at the corner of the pier where the barge struck, and was not less than *fifteen* feet deep on the *inside* of the pier. Thirty feet out from the pier, the water is over twenty feet deep at low water [deposition of E. H. Worrall, original record p. 844], and allowing eight feet for the difference between high and low water, and also allowing for the width of the boat and barge, it appears that at the time the collision occurred, the Sheridan *was navigating in water that was at least twenty eight feet deep.* In the light of this evidence it seems to us that it should hardly be contended that the pier does not stand in the navigable channel of the river, or that the pilot of the Sheridan was not justified in taking the side of the channel that he did.

It also appears from the testimony that on the night of the accident the water on the gravel bar above the pier was deep enough to have allowed the Sheridan and the barge easily to pass over it. We have shown that the river was high at that time, and within from three to five feet of the top of the pier. We have also shown that when the water is within five feet of the top of the pier,

there is six feet of water on the gravel bar. (Deposition of E. H. Worrall, original record p. 852). See also depositions of E. V. Holcomb and R. B. Hatch, original record pp. 114, 462. There was, therefore, six or eight feet of water on the gravel bar on the night of the accident. The pilot knowing this and that he could pass over it easily and safely, and following the bend of the river as the boats do, if he had kept at a distance of one hundred and twenty feet from the shore, he would have hit the pier, for at the stage of water which prevailed at that time, the outside of the pier was over one hundred and twenty feet from the shore. Or he could have gone around the point of the gravel bar and kept within the navigable channel and still have hit it. Whatever course he took, we know that he could easily have passed over this bar, that the night was dark—dark enough for a lantern in Ft. Madison,—[see depositions of W. R. Slocum and F. Heisel, original record pp. 470, 478, 123], and that he had a barge in tow on the starboard side the effect of which was to draw the boat over to the Iowa side of the channel towards the pier. Whether he passed over the gravel bar or around it, the circumstances under which he was navigating his boat that night, were such as to have made it difficult, if not impossible, for him to keep the center of the channel.

We desire to call the attention of the Court to the time when the surveys, maps of which have been offered in evidence by respondent, were made. The first survey, that of E. H. Worrall, was made when the water was only two feet above extreme low water mark, and the other, that of R. H. Heath, when the water was even lower, in fact, when the water was at the lowest stage except one, that the witness had ever known.

The respondent evidently selected the lowest stages of water

for making these surveys so as to make the gravel bar occupy a very prominent position on his map, and to represent, if possible, the channel and current as being outside of the piers. To present to the Court a correct idea of the piers and the shore as they were on the night of the accident, the surveys should have been made at a time when there was the same or about the same stage of water in the river which prevailed when the collision took place. If the surveys had been made at such a time, the gravel bar would not have appeared on the map at all, for it would have been covered with six or eight feet of water.

These maps are otherwise defective, for they do not show the bend in the river, nor the sand bar out in the stream. They do, however, show that even at the low stage of water which prevailed when the survey was made, there was a depth of water of from *fourteen to sixteen feet*, in a nearly straight line drawn from the point of the gravel bar to the pier or to a point not over twenty feet in front of it. The testimony of the engineer also shows that the water at the corner of the pier where the barge struck was twelve feet deep at the time of the survey. We have shown that the difference between high and low water is from ten to thirteen feet; but allowing eight feet for the difference in the depth of the water at the time of the survey and at the time of the collision, and we have from *twenty to twenty-four* feet of water between the pier and the point of the gravel bar on the night of the accident.

We also call the attention of the Court to the line marked on the map "shore side of channel." This line, the witness says, is twenty feet from the pier. The reason he gives for calling this line "shore side of channel" is, that he intended to indicate by it the deep navigable waters of the channel of the river. Yet he admits that here on the Mississippi river, he calls five feet of water

navigable, and takes his authority from Government instructions, and that he cannot answer as to what pilots consider the navigable channel. He also admits that the water inside of this line, at the time of his survey, was navigable as to *depth*, though not, as he says, as to current. The water, at the line indicated by him as shore side of channel, was, at a point in front of the pier, as his testimony shows, from sixteen to twenty feet deep, even at that low stage of water. How far this depth of water extended we do not know, the channel of the river varies greatly in depth, but the *navigable water* of the river, and as we claim the navigable channel, certainly extended inside of the pier, and he should, therefore, have drawn the line marked "shore side of channel" between the pier and the shore.

His survey was made partly on ice, and whether he could accurately note the limits of the current may admit of question, but even if the current did not extend within twenty feet of the pier, at that low stage of the river, we contend that it must extend inside of the pier, at a high stage of the river, and when there is between six and eight feet of water flowing over the gravel bar, as was the case on the night of the collision. When the river is high, the volume of the current is of course greatly increased.

The testimony shows that there is a bend in the river extending from Ft. Madison to a point below the lower pier.

Deposition of	A. Wempner,	original record, page	316.
"	U. Brock,	" "	331.
"	G. W. Duncan,	" "	339.
"	J. Ruby,	" "	350.
"	H. G. Carson,	" "	383.
"	John Griggs,	" "	398.
"	W. A. Griffey,	" "	788.

It also shows that the current sets towards the Iowa shore, following the bend of the river until it reaches the point below the lower pier, where it crosses over to the Illinois side. The force of the current must therefore be along and against the Iowa shore, until it reaches the lower part of the bend. Now it will certainly not be contended that the little gravel bar, which is covered with water at an ordinary stage of the river, and has from *six to eight feet of water on it at a high stage* (as when the collision occurred) and the point of which is really but about two hundred feet from the regular shore line, can turn the whole current and channel of this large river out into the stream. Whatever effect it has is principally at low water, and any slight divergence would be overcome in a distance of seven hundred and fifty feet, which is the distance from the gravel bar to the pier. Its effect, such as it is, could only be on a comparatively small portion of the current, especially if it is as wide at the gravel bar as counsel claim it is. The greater part of the current would still keep on its course towards the Iowa shore, and cast its force against it. Its general direction would be undisturbed, and the divergence at the gravel bar would be counteracted by the sand bar out in the river. The very deep water at the pier and near there shows that the current is strong at that point and has made a deep channel.

Counsel for appellant state that at the time the witness, Worrall, made his survey, the gravel point was several feet out of water "as it always is *except at high stages of water.*"

Where is the evidence of this? On the contrary, the evidence shows that it is an almost perfectly flat bar, and is covered with water except at an ordinarily low stage of the river. The survey was made when the water was only two feet above the lowest known

water mark, and Worrall, in answer to a question as to how high above the surface of the water the general surface of the bar was, says; "Two feet as the average height above water. The delta is almost perfectly flat." In another part of his testimony he says that when the water is within five feet of the top of the pier (it was within from three to five feet of the top of it when the collision occurred) the water is from six to eight feet deep on the gravel bar.

Counsel also state that this survey shows that "the channel and current of the river are of necessity outside the pier." Now, Worrall admits that he does not know what pilots consider the channel (which is the material fact) and it is shown that his survey was made partly at least on ice, when the water was very low and when *the current must consequently have been of very small volume.* He could not, therefore, have known how far in around the pier the current flows, when the river is high, or at an ordinary stage. He, however, admits that the channel and current were within twenty feet of the pier, even at the low stage of the river which prevailed when the survey was made. How would it have been, supposing his statements to be correct, with eight feet more of water in the river (as there was when the collision took place) and with the current several fold greater?

It is also stated by counsel that "high water exists occasionally only," and that "the water is at its ordinary or low stage during nine tenths of the year." No evidence has been offered in support of this statement, and we deny that it is correct. High water exists during about five months of the navigation season. The only evidence on this subject is the testimony of P. O. Kell, one of respondent's witnesses, who, when asked "How much of the year is it high water?" answered, "About five months of navigation."

(Original record, 736.) This testimony we claim to be true, and no effort has been made by respondent to contradict it. The "high water" referred to is ordinary high water, and it is to this that the testimony of the witnesses in the case relates. Neither we or our witnesses have alluded to any extraordinary rise in the river. The water at the time of the accident was ordinary high water.

Counsel claim that the navigable channel must be understood to be the *ordinary* navigable channel. When is it the ordinary navigable channel? During the four or five months when the river is at an ordinarily high stage, or during the three or four months, at most, when it is at a low stage?

It is also stated by counsel for appellant that some of our witnesses have made mistakes as to the width of the channel in front of the gravel bar and the pier. They, however, omit to state that their *own* witnesses, who did not make surveys or measurements, have made the same mistakes. But the fact that they did not know the width of the channel at those points, proves very conclusively that the pilots are not in the habit of navigating boats on the eastern side of the channel, and therefore do not know its exact width.

Now, we have shown that at very low water, the water is twelve feet deep at the pier, and at a distance of thirty feet from the pier, one of the surveyors testifies that he could not "touch bottom with a twenty foot sounding pole." This shows that the deep strong water of the channel is on the western side of it.—This is also borne out by the testimony of the pilots that they have been in the habit of navigating their boats on that side of it.

We do not know how wide the channel is directly opposite the pier and the gravel bar, but it is clearly proven not only by our witnesses, but by most of respondent's witnesses, that there is a

sand bar out in the river between lines drawn directly east from the gravel bar and pier. These lines are seven hundred and fifty feet apart, and it seems that the surveyors did not make any surveys out in the river between these lines. Our witnesses have sworn that the effect of this sand bar is to turn the current towards the piers, and it is evident that this must be its effect.

Counsel, referring to the decision of the Circuit Judge, also claim that because the point of the gravel bar is further out in the stream than the pier, therefore the pier is not in the ordinary channel of navigation and that it was necessary for the Sheridan in order to strike the pier to turn in towards the shore. Now, the point of the gravel bar is only about two hundred feet out from the shore line, and the pier is *seven hundred and fifty feet* below the gravel bar. The Sheridan may have passed over the gravel bar, for the water on this bar was six or eight feet deep and she drew only four or five feet, but if she did not, she made a divergence from a straight line of only *eighty* feet in going a distance of seven hundred and fifty feet, for, on the night of the accident, the pier was about one hundred and twenty feet from the shore line; and when we remember that there is a deep bend in the river at this point, and that the tendency of the current is towards the shore and the pier, and that the pilot had a barge in tow on the starboard side of the boat which had the effect to draw the boat to that side of the channel, we can easily see how the Sheridan came to be where she was.

Counsel for appellant have devoted several pages of their argument to proving that the bank of the river at or near the mill of respondent formerly extended seventy five or one hundred feet into the river farther than it does now; that cutting down and removing the timber and bushes from the bank caused it to crumble and

fall away; and that there were many large rocks or boulders in the water extending from the water's edge or shore line in an ordinary stage of water out about as far or nearly as far as the upper pier on which libellant's barge collided. They also speak of a "reef of rocks and boulders" which they say "lay close to where the pier now stands."

Now, there is not a particle of testimony that "cutting down and removing the timber and bushes from the bank caused it to crumble and fall away." Nor is there any testimony which shows that the boulders extended "from the water's edge or shore line in an ordinary stage of water out about as far or nearly as far as the upper pier on which libellant's barge collided." Nor has any witness stated that there was ever a "reef" of rocks and boulders in that vicinity.

It is true that two or three witnesses have stated that the bank has washed away somewhat at that point. One of them, Tamme, says he thinks it has washed away as much as one hundred feet.—The other witness, J. Scott, says seventy five feet. But Tamme also states that the water is "*middling strong*" there, which shows that the current of the river flows strongly along and against that shore. Especially, must this be the case, if it has washed away one hundred feet of the bank, notwithstanding the "boulders" and the "reef" of rocks which counsel refer to.

Now the evidence in regard to these boulders is simply this.—There were a number of boulders in that vicinity, some of them lying out of the water, and some in it, but close to the shore.—Some of them, as J. C. Atlee states, were removed fifteen years ago, and some of them within two years, when the bank was where or about where it is now. He found them in the way lying as they did on the shore near his mill, where he had occasion to

work, and he removed some of them, and some of them he buried in the ground where they were. They were not near the pier, nor in the deep water, at least the evidence does not show that they were, and, of course, never interfered with navigation at the point where the barge collided.

They also state that "twenty years ago when the bank extended out one hundred feet farther than it does now, it came within twenty four feet of where the pier stands; and yet libellants' pilot witnesses used to navigate their big steamers through twenty four feet of space," &c. This is so long ago that we do not care to spend time on this statement. They forget, however, that the corner of the pier where the barge collided is *one hundred and forty nine* feet from the present bank, as the map of Worrall shows, and that we have proved that all along, during the many years since that time, boats have been navigated not only over the place where the pier stands, but even inside of it, and at low water; and the testimony shows that there has been plenty of room for them to do so.

Counsel seem to think that we must have endeavored to find witnesses to disprove these statements in regard to the washing away of the bank, and in regard to the boulders, and have failed to do so. The truth is we did not seek a single witness to disprove these statements, for we did not consider them of any significance in this case. We certainly did not suppose they would contend that the rights of the public were in any way diminished by the fact that a portion of the bank had been washed away, and that a little more space had been added to a navigable stream.

Before closing this part of our argument, we desire to notice another point made by counsel for appellant, namely, that for fifteen or seventeen years "with scarcely an intermission of a day" the

respondent has "had rafts, some of them two hundred feet in width, and none hardly ever less than seventy five feet in width, laying in the river immediately in front of the Atlee mills, at all those seasons of the year when rafting of logs is allowable and saw mills usually run."

The testimony does not support any such statement. It is absurd to suppose that before the pier was built, these rafts extended over two hundred feet into the river, where there is no doubt that there is a strong current.

Some of respondent's witnesses have confounded the time when rafts have lain in front of the mill *since* the erection of the pier, with the time *prior* to its erection; but we claim that a careful examination of the testimony will show that these rafts have not usually been kept either *in front of the mill* or *where the pier stands*, [which is the material question], but above the pier, under and on the gravel bar, where, as Worrall's map shows, the bank recedes considerably, and where they can be kept more safely than below in the vicinity of the pier.

The pier is below the mill, and is seven hundred and fifty feet distant from the gravel bar, as respondent's surveyor, Heath, testifies. Some of the witnesses have spoken of rafts in front of the mills, but have evidently intended simply to testify that they were in front of the place where respondent carries on his lumber business, which extends several hundred feet above and below the mills. When he has had unusually large rafts there, there may have been times when they have extended some distance into the river above the mills and pier, but nearly all the witnesses agree that this has not generally been the case.

We set this matter at rest by the testimony of respondent's su-

perintendent at the mill, P. Cowles, who testified on our cross-examination, as follows:

"He (respondent) does not usually keep any logs between the pier and the mill; the logs are kept *above the pier, just below the bar*;" and that "*it is most of the time open water*" between the upper pier and the mill. (Original record, p. 812).

And respondent's counsel seem to have had the same opinion, when they cross-examined our witnesses, for, in the 13th cross interrogatory in Capt. E. V. Holcomb's deposition (original record, p. 114) they ask him:

"Did not long strings of lumber usually lay next *above* said pier, while you were navigating the river before the barge struck the pier?" To which the witness answers, as the fact was: "I think I have noticed logs laying *in the bend above that pier.*"

C. B. Goll says: "There were at times strings of lumber *in that neighborhood.*" (Original record, p. 154.

J. Ruby, in answer to the following question put to him by respondent's counsel, "Has not Atlee had rafts lying along near that pier, since that pier was erected, seventeen years ago?"

Says, "His rafts have usually lain *above where the piers are erected, close under the gravel bar.*" (Original record, p. 356).

A. A. Scott, *who was in Atlee's employ at the mill*, says,

"Before upper pier was built, Atlee moored his rafts *right under the reef of that gravelly bar.*" (Original record, p. 361.)

H. C. Gillaspie, says, that he "landed this spring right between the piers to take on lumber," and that "there were no rafts lying between the pier and the shore. There were logs lying in *above the gravel bar and below French's Creek.* (Original record, p. 451.)

It appears all through the testimony that boats have been in the habit of running over the place where the pier stands, which shows that rafts have not been there. It is only *since* the pier was erected that respondent has attempted to hold his logs at that place.—It also appears from the testimony that, since the pier was constructed, boats have frequently passed between the pier and the shore.

Deposition of	T. Douglass,	original record, page	285.
"	J. Ruby,	" "	352.
"	A. A. Scott,	" "	360, 363.
"	O. M. Ruby,	" "	367.
"	H. C. Gillaspie,	" "	449.
"	Chas. Gillaspie,	" "	454.

It is not disputed that there was no raft near the mill or pier *on the night of the accident.* J. C. Atlee, the father of respondent, and one of the parties in interest in this suit, as he testifies, admits that there were no rafts there at the time of the collision, but only a few loose logs lying by the shore. And the shore was over one hundred feet distant from the pier. (Original record, p. 637).

So far as respondent's right to obstruct the river where the piers stand is concerned, it would make no difference if he had kept rafts there, for he certainly had no more right to obstruct the river with rafts than with the pier.

It also appears from the testimony that when respondent had rafts near his mill, he had kept lights on them in the night, and, therefore, even if rafts had been in the channel before, the pilot of the Sheridan had the right to assume in the absence of a light, that there was no raft there that night.

Respondent's rafts had varied greatly in size, and sometimes he had very few logs. He certainly had not generally kept either logs or rafts at the point where the collision took place. His rafts above the pier may sometimes have extended a greater distance from the shore than the place where the pier stands, but this was not general, it was the exception, and early in the spring, as at the time of the collision, he did not have rafts there. The testimony shows this, and the pilot had, therefore, no reason to expect that there would be any obstruction of that kind in the river on the night in question, and was not therefore guilty of any negligence, on that account, in running where he did. Respondent, having placed an unlawful obstruction in the river, cannot shield himself from liability by claiming that libellant should have navigated its boat farther out in the stream, unless he can show that the pilot knew of the obstruction. But the testimony shows that he did not know of it.

II.

It is claimed by respondent that the pilot in charge of the Sheridan was not competent to navigate a boat past this pier, because he had not been navigating boats in that vicinity during the navigation season of 1870.

He had piloted past Ft. Madison during the entire season of 1869, and had passed there twice between 1869 and the time of making the trip on which the collision occurred, but was off watch and asleep both times. (Original record, pp. 150, 153).

And, as he testifies when speaking of his trip up the river in April, 1871, that the pier had been built since he had last passed Ft. Madison, we infer that he passed Ft. Madison twice in 1870, but under the circumstances above referred to. The testimony

shows that pilots are often absent from portions of the river for a season, and it is not supposed that such temporary absence affects their competency.

The pier, however, was not there in the navigation season of 1870.

Deposition of	J. Ruby,	original record, page	352.
"	A. A. Scott,	" "	360.
"	J. C. Atlee,	" "	629.
"	Milo A. Pruden,	" "	838.

It is not disputed that the pilot of the Sheridan was a regularly licensed pilot holding a license from the U. S. Inspector, that he had no knowledge of the existence of the pier, that the through boats running between St. Louis and St. Paul commenced making their trips in the month of April, of that year, that the Sheridan was one of these boats and was on her first trip of that season, and that this was the first navigation season since the erection of the pier.

The pilots and officers of the through boats had no opportunity of learning of the existence of the pier, and the testimony shows that some of them had not learned of it. They had no knowledge of it until they made their first trips that spring.

Deposition of	E. V. Holcomb,	original record, page	113.
"	F. DeMers,	" "	249.
"	J. A. Patten,	" "	230.
"	J. Ruby,	" "	353.
"	John Griggs,	" "	400.

And they had the right to assume that the river was, as theretofore, free and clear of all artificial obstructions.

We claim that every thing was done that could have been done, to prevent the collision, after the obstruction was discovered. The pilot, as soon as he saw the pier, rang the bell to stop the boat, and then to back it, and both orders were obeyed, but too late to prevent the accident.

III.

It is probable that the collision would not have occurred, if the respondent had placed a light on the pier.

This he did not do, (see original record, pp. 117, 126, 145, 226, 303) although, as we have seen, the first navigation season since the erection of the pier had just opened, and although the night was dark.

We contend that under these circumstances, the respondent was guilty of gross carelessness and negligence in not having a light on the pier that night; and we think we have shown in the testimony that it is the custom on this part of the river to keep lights during the night, on all obstructions, whether temporary or permanent, in the navigable part of the river.

In view of these facts, and of the further fact that the pilot was navigating his boat in the place where he and many other pilots had often navigated before, we submit that no fault or negligence can be imputed to the pilot, and that libellant is entitled to the full amount of the damages, as held by the Circuit Court.

IV.

The second proposition submitted by counsel for appellant is as follows:

"If the said structure extended beyond the line of navigability at any season, it is in the season of high water. It does not extend beyond said line in times of low water, and therefore does no more than to afford the riparian proprietor means of access to the navigable water at all seasons, which is his right, and it is therefore a lawful structure."

1. We have shown that the pier does extend beyond the line of navigability, *at low water.*

Respondent's own witness, Worrall, testifies, as we have seen, that the water at the pier where the barge struck was twelve feet deep, even at the low stage of water which prevailed when he made his survey. Do counsel deny that this is navigable water? The Circuit Court decided that the evidence establishes the place where the pier stands "to be within the navigable channel of the river even at its lowest stage" and that "boats of the largest size, and at any stage of water, can pass inside of the piers, if the way be not obstructed by logs or artificial erections." The District Court must also have held the pier to be within the navigable water of the river, for if it is not, then respondent had the right to erect it where he did, and the court could not have held him liable for one half of the damages resulting from the collision.

Counsel, assuming that the pier does not extend beyond the line of navigability in low water, argue that the riparian proprietor has the right to build out to the navigable channel, as it is in *very low water*, and say "Suppose it (the navigable channel) is limited to a somewhat narrow channel near the center of the river at very low water, and widens as the water rises, until at high water it reaches from bank to bank. At what stage of the water may he build to the navigable channel? Clearly at low water, for otherwise he could not have access to it at all seasons."

Do counsel seriously claim that navigation can be limited or restricted, at all times, to the navigable channel of the river as it is at *very low water?* If the doctrine contended for be correct, then the riparian proprietors on both sides of the river may build out to the line of the navigable channel or navigable water, as it is at "very low water," although it may be half a mile on each side, and boats must confine themselves to the narrow space within these lines, at all times, both when the water is high and when it is low. Now, it is often very difficult to navigate the river at very low water. At this stage, the current winds along, sometimes on one side of the river and sometimes on the other, and boats are obliged to pursue a very irregular and meandering course. And yet, according to the argument of counsel, the riparian proprietors all along the banks of the river, on both sides of it, have the right to build out to this narrow line of channel, and compel the pilots to confine themselves to this irregular course of navigation at times of high water when they could easily and safely navigate outside of it, and thus save time and distance.

Suppose that the riparian proprietors on each side of the river should thus build out to the navigable channel or navigable water as it is at low water, and leave only a narrow space for the passage of boats, must boats constantly run the risk of colliding with piers, during the greater part of the navigation season, to accommodate the riparian proprietors during the season of low water? Is not the public to have the benefit of the enlargement of the navigable channel or navigable water, in enlarging the space for the passage of boats? The right of the public to navigate the river is the paramount right, while the right of the riparian proprietor to use the unnavigable water adjacent to his land, is a concession to him, for his title extends to high water mark only.

The public have the right to the whole of the navigable channel. The whole or a portion of it may be used for purposes of navigation. One portion may be used one year, and another portion the next year. The right of the public is not affected although boats may not use certain portions of it for several years. To hold that the riparian proprietors have the right to build out to the navigable channel as it is in very low water, would be, we submit, an unreasonable infringement of the rights of the public. This extreme low water occurs only occasionally, at intervals of many years, and such a rule would make navigation inconvenient at all times, and very often almost impossible. *Counsel have not produced a single authority that navigation must be confined to what they term the navigable channel or the ordinary navigable channel,* especially as between the riparian proprietor and the public, or that boats may not navigate in any part of the river where the water is deep enough to carry them safely. In fact, in this case, it makes no difference whether the pier stands in what counsel call the ordinary navigable channel or not, for it stands in water that is navigable at all times, and the testimony shows that the line of navigability is inside of the pier. Pilots have often landed their boats all along the shore inside of the piers. (See original record, pp. 285, 352, 360, 363, 367, 449, 454). Applying the rule laid down in the case of Yates vs. Milwaukee (cited by counsel) to this case, the respondent had clearly no right to build his pier where he did. He paid no attention to the navigable channel, but constructed his pier as far out as he thought it necessary for the protection of his rafts, and claims that, since the erection of the pier, he projects his rafts still further into the navigable channel, which shows that he had no regard for the rights of the public.

2. We claim *that the public have a right to navigate over*

every part of a common navigable river, and that no one has a right to obstruct it.

No case has been cited by respondent's counsel in which it has been held that a riparian proprietor may, without special authority, appropriate to his own private use, any portion of the navigable channel or navigable water of a river. What right has any person to permanently obstruct any portion of a public high-way, either on water or on land? A navigable river is as much a public highway as a street. Of course, we are not speaking of cases where the proper legislative authority has been given, but without legislative authority, upon what principle of law can a person claim the right to permanently obstruct a public highway at all?

Courts have allowed persons to *temporarily* obstruct portions of public streets, while building, or while removing goods, and in some other similar cases, but it has been allowed from the necessity of the case. Necessity compels them to occupy temporarily a portion of the street. Respondent has not shown that any such necessity compelled him to build his mill and pier where he did.

Chancellor Kent in his commentaries (Vol. 3, p. 515, 7th Ed.) says: "The public have at common law a right to navigate over every part of a common navigable river."

Is not this the common law still, and the law in all cases in which Congress or the legislatures of the States have not given authority to individuals or to corporations to occupy portions of it? It gives the navigator the right to use any portion of the navigable part of the stream, and does not confine him to the current or the channel. Descending boats may use the current for it accelerates their speed, and boats may usually use what is called the channel, but when the river is high may they not use any portion

of the river where the water is deep enough for them to go in safety? Of course we do not refer to a flood or freshet, or to any such extraordinary rise in the river. It seems to us that Courts cannot restrict navigators to any particular part of a navigable stream. It is true that although an obstruction may be unlawfully placed in the river, the navigator has no right to wantonly expose his boat to risk, but his *right* to the navigable part of the river is still the same. It is a public right and cannot be taken away from him, at least not without legislative authority. This right of navigation is paramount to all others and where other rights come in conflict with it, they must yield.

In the case of *Porter* vs. *Allen* (8 Ind. 1 Tanner p. 1.) the Court held that "The Ohio river is a common highway, and its character in that respect is not restricted to what may be called the channel," and that "Persons navigating the Ohio river may without the fault of culpable neglect, run their boats in any part of the stream where the water is of sufficient depth to carry them safely."

In this case the boat *was not in the navigable channel of the river when the accident occurred*, but the Court held that the defendant was liable for injuries resulting from the obstruction, and say "To hold that every part of the river except where boats usually run, may be willfully obstructed, would be an adjudication unsupported by any rule of law."

It will not be denied that the Mississippi river is a public highway, and that riparian proprietors upon it, own to high water mark only. [See 3 Iowa Rp'ts, p. 1, 32 Iowa, p. 106].

The courts have, however, held that riparian proprietors upon bays, lakes and navigable rivers have a right, although their title extends to high water mark only, to use the *shores* and the

shallow water beyond the shore, *as far out as the navigable part* of the bay, lake or river, and have allowed them to *communicate* with the navigable portion of the same, thus giving them the benefits naturally resulting from their ownership of lands on navigable waters. Thus far the courts have gone, and here they have stopped, and they have not allowed the riparian proprietor to build any obstruction in navigable water at *any* ordinary stage, except in cases in which a legislative grant or authority has been obtained and in which some great public purpose, like that of navigation, has been served. And the reasons are obvious. By this rule, the right of navigation is still maintained paramount to all others, for the public loses no part of the navigable portion of the stream. On the other hand, the interests of the riparian proprietor are preserved, for he has the privilege of a communication with the navigable water, and all the incidental benefits resulting from such communication. By no other rule can the rights and interests of both be so well harmonized. And this rule is applied, as we have already stated, to the sea and the lakes, where there is an abundance of room—an almost unlimited space for navigation.—Much more than should it be applied to rivers where the space for navigation is limited and narrow.

3. One of the defenses set up by respondent in this case, is, that his pier aids him in his business, and that his business contributes to commerce, and that, therefore, he has a right to maintain his pier where it is.

It is doubtless true that his business contributes to commerce to some extent, but this may be said of nearly every kind of business, and this defense both in regard to navigable streams and to highways on land has, as we shall see, often been raised, and has as often been overruled by the courts. If this defense should be

sustained, then every person whose business contributes to commerce, and who might have occasion to appropriate a portion of a street or a navigable channel in connection with his business could obstruct the public highway, by land or by water. The danger of establishing such a rule can be readily seen.

The respondent came voluntarily to this part of the river and built his mill at a point where the water is navigable nearly to the shore. He might, as the testimony shows other saw mill owners on the Mississippi river have generally done, have selected a site on the bank of the river where the water was shallow, and where he would not have interfered with the rights of the public. The testimony shows that of the whole number of piers on the river above Fort Madison, there are but one or two which are at all in the way of navigation.

Deposition of	E. V. Holcomb,	original record,	page	116.
"	C. B. Goll,	"	"	157.
"	W. J. Gorseich,	"	"	193.
"	J. F. Goll,	"	"	215.
"	J. A. Patten,	"	"	231.
"	H. G. Carson,	"	"	387.

The respondent brought upon himself this conflict with the right of navigation.

It is not claimed by him that his pier in any way *aids navigation.* Nor is it claimed that it is of any benefit to commerce except in the remote and indirect way of furnishing additional protection to the rafts of logs which are used in his business. He succeeded without these piers from 1854 to 1871, and the testimony shows that they are not a *necessity* in his business, but only a *convenience,* saving him some expense.

His business may be of some benefit to commerce, but the benefit of the *pier* to commerce is too remote and indirect to entitle it to any favor as against the right of navigation and the large and general commerce that is carried on on the river. Moreover, as we have seen, there is no necessity for his carrying on his business *at that particular place.* At least, he has not shown it. But even if the pier were of any direct benefit to commerce, why should he be allowed to maintain it in the navigable part of the river where the water is twelve feet deep at a low stage of the river, and twenty feet deep at an ordinarily high stage? His own interests and the interests of commerce could have been and could still be equally well served at another place. The testimony shows that just below the lower pier, the channel crosses over to the Illinois shore, and that boats make the crossing there. Here was and is a place only a few hundred feet distant which would have served his purpose just as well and even better than his present location. It is well known that the channel of the Mississippi river is sometimes on one side of it and sometimes on the other, furnishing abundant opportunity to use the shallow waters of the river without trespassing on public rights.

If the principle which respondent contends for is sustained, then other mill owners on the river will claim the same privilege, and will, if it suits their convenience, invade the navigable channel of the river under the pretense that it is of benefit to commerce, and the shores of this river will be filled with these obstructions projected into the navigable channel in defiance of the right of navigation. The right and interests of navigation were here long before respondent built his mill. His interests bear no comparison to those of the public, either in importance or extent. The testimony shows that his mill buildings and machinery are

worth but sixty thousand dollars, (deposition of J. C. Atlee, original record, p. 644). Single boats with their cargoes constantly pass his mill, which are of greater value than all that he has invested there. Important as his interests may be to him, they are insignificant in comparison with those of steamboatmen and raftsmen, and of the general public interested in the navigation of the river. This time it was a barge that was wrecked. The next time it may be a steamboat of greater value than all his mill property.—Other boats, as we have seen, have barely escaped collision with the pier, although it has been there but a short time.

V

The third proposition submitted by respondent's counsel is as follows:

"That the structure being necessary to the enjoyment by respondent of his mill property, it could not be regarded as a nuisance even if it did extend slightly beyond the line of navigability, provided it does not *actually* and *materially* obstruct the navigation of the river."

We claim that respondent has failed to prove that the pier is necessary to the enjoyment of his mill property, and that he has not shown any necessity for building his mill at a point where the river is navigable nearly to the shore.

We also claim that he had no right to obstruct the navigation of the river, *in any degree.* We have, however, shown by eighteen witnesses, who are pilots, that the pier *is* a *material* obstruction to navigation. It does not by any means follow that because there may be room for boats to pass outside of the pier, therefore, the pier is not an obstruction to navigation. Our witnesses have

shown a variety of circumstances which may make it necessary for pilots to use the water where the pier stands. The fact that this collision took place while the Sheridan was in charge of one of the oldest and most skillful pilots on the river, and that other boats have barely escaped collision with it *since then*, proves that it is in a dangerous location.

1. We understand the decision of the Judge of the District Court (printed with the argument of respondent's counsel) to be that a saw mill owner on the bank of the Mississippi river, may, for purposes connected with his business, construct mill piers in the navigable channel of the river, provided he leaves a reasonable space for the passage of boats.

Why should the public be required to yield a portion of the navigable channel? There is certainly room enough for the riparian proprietors along the banks of this river to build their mills where they will not interfere with the right of navigation. If it was necessary for respondent to build his mill where he did, why has he not alleged and proved it? This is matter of defense, as the cases show.

The cases do not, we submit, establish the rule that in such cases as that of respondent, a riparian proprietor may, without special authority, obstruct a portion of the navigable channel, provided he leaves a reasonable space for the passage of boats, or does not *materially* obstruct it. The rule in regard to these obstructions is laid down without qualification, and is that he shall not obstruct it at all. And this rule is applied to the sea, bays and lakes where there is an abundance of room for navigation. Can the owner of land adjoining a highway by water or by land, appropriate a portion of the public property to his own private use

and make himself the judge whether or not he materially obstructs it?

The principle contended for is not, as it seems to us, capable of any *certainty* in its application. In each case, the question must still arise, what is a reasonable space for the passage of boats, and it will require the judgment of a court to determine it. Where the channel is straight, and the current flows in a straight line, a certain number of feet may be sufficient. But take a case like that of respondent, where there is a deep bend in the river, where the channel and current are irregular, and where there are local difficulties, in the way of navigation; in such a case, certainly, a much wider space is necessary. Not only that, but it is necessary that the side of the channel lying in the bend of the river, against which the current casts its force, should be kept free from obstructions, for the current naturally carries the boats to that side of it. The navigation of large boats which have great weight and momentum, in such a place, is a matter of difficulty and danger.

In the case of Dutton vs. Strong, (1 Black 1) this Court decided that "Riparian proprietors have a right to erect bridge piers and landing places on the shores of navigable rivers, lakes, bays, and arms of the sea, if they conform to the regulations of the State and do not obstruct the paramount right of navigation;" and that "*the right to make such erections terminates at the point of navigability.*"

The decision is not that they shall not *materially* obstruct the right of navigation, but is unqualified. In this case, the erection was in lake Michigan, where there was an abundance of room for navigation outside of it. The obstruction may not have extended into the navigable part of the lake, yet it seems to us that the

court has clearly indicated its views as to how far the riparian proprietor may go, and to have decided the *point* to which he may build. In other words, the court lays down the *limitation* of his riparian rights in this direction, and the *rule* by which he is to be governed. The pier in this case was constructed for private use, but it *aided navigation* by connecting the land with the navigable waters of the lake, and by furnishing a landing place for boats.

In the case of Yates vs. Milwaukee (10 Wall. 497) this Court also decided that "Among the rights of the riparian proprietor is *access* to the navigable part of the river from the front of his lot, the right to make a landing, wharf or pier for his own use or the use of the public, subject to such general rules and regulations as the legislature may see fit to impose," and that " this right must be enjoyed in due subjection to the rights of the public."

In this case, the space between the margin of the water and the navigable channel of the river "was of no use for purposes of navigation." This must mean at *any* stage of the river, and distinguishes it from the case at bar. Moreover, there was no evidence to show that the wharf was an actual obstruction to navigation or was in any other sense a nuisance.

The structure was a wharf, and was constructed by the owner "in order to reach the navigable part of the river." Unlike the pier of respondent, it was intended to be connected with and used in aid of navigation.

The respondent does not claim to need or use the water between the pier and the mill or the pier itself for any such purpose as that for which the shallow water and the wharf in this case were used, nor for any purpose connected with the navigation or commerce of the river. He claims to use the water as a place for keeping

his logs, and the pier for the purpose of detaining them, after they have been brought down the river. He certainly does not need deep navigable water for these purposes.

The rule that the right of the riparian proprietor *"terminates"* at the point of navigability, seems to us to be the only safe one, for it is the only rule that admits of a reasonable limitation.

If riparian proprietors understand that they can go thus far and no farther, they have a reasonably certain and fixed rule by which to be governed. Under the other rule each riparian proprietor would judge for himself what is a reasonable space for boats, and losses and injuries would be liable to occur. There may be objections to any rule that may be laid down on this subject, but we submit that there are less objections to this than to any other, that it accommodates greater interests, and is more nearly in accordance with time honored rules of law on this subject. If it be said that the rule is in some degree uncertain, we answer that it is less uncertain than the question of what is a reasonable space for navigation.

The question as to what is navigable water need not arise in regard to this pier, for it stands in water that is navigable, and more than navigable for the largest class of boats that navigate this part of the river, even at the lowest stage of water.

In other cases, in regard to wharves, piers, docks and ship-yards built out by riparian proprietors in order to reach the navigable water of the stream, and referred to in the decision of the District Judge, we submit that a reasonable construction of the term "navigable water" would be water that is navigable for the class of boats that have occasion to use the wharf, pier, dock or ship-yard. This would be a reasonable construction of the term

for it would answer every purpose and accommodate every boat, and would be a liberal construction for the riparian proprietor. In regard to piers which are in no way connected with navigation, like the pier of respondent, the riparian proprietors could not complain if a stricter rule were applied to them.

It seems to us that this question of what is or is not navigable water is one of very little uncertainty. There can be very little difference of opinion as to what constitutes it, and no practical difficulty for the depth of water needed for navigation is well known to all who do business on the river. A liberal construction of the term removes *all* doubt.

The line of navigability as the dividing line between the public and the riparian proprietor in the use of navigable streams, is therefore, the true and safe rule.

2. The same defenses set up by respondent and referred to by the Judge of the District Court, namely, that there is a reasonable space for the accommodation of the public outside of the obstruction, and that his business contributes to commerce, have often been before the courts in cases in which individuals have sought to justify themselves in placing obstructions in public streets and in navigable waters, and these defenses have been uniformly overruled.

In the case of Hart vs. Mayor, &c., of Albany, (9 Wend, 571) the court decided that "It is not lawful for an individual, *without grant*, to construct and moor a floating store house or vessel for the receiving and delivering out of goods and merchandise in any public river," &c., and that "such permanent appropriation and exclusive occupation of a portion of a public river is an obstruction to its free and common use, and is indictable as a public nuisance."

The plaintiffs alleged that the float in question was constructed by them, to *facilitate their business*, which was that of transporting goods and merchandise on the Hudson river, and that *boats never came or had occasion to come in the ordinary course of their business to that part of the basin where the float was moored.* The gist of the defense was, that the float, in the place where it was moored, was no obstruction to navigation, and that it aided commerce, the same defense that respondent sets up in this case. But the court say "It may very well be that the convenience of the public at large would be promoted by it; that additional facilities for the transhipping of goods would be afforded; and that enough of the basin would still be left for the accommodation of the sloops and boats that might enter it. And yet, conceding all this, would any man contend that such erections could be justified?"

They also say that "The public are entitled to the use and enjoyment of the whole of the highway, and no individual can appropriate a portion of it to his own exclusive use, and shield himself from responsibility by saying *that enough is still left for the accommodation of others.*"

In the case of The People vs. Vanderbilt, (28 N. Y. 1 Tiffany, 396), the court of appeals decided that "a crib or pier erected in the waters of the harbor of New York, is a public nuisance, unless the party erecting the same is authorized to build it, at that place, by some power competent to confer an authority." And that "the offer to prove that the crib and proposed pier were not and would not be, an actual nuisance, and would not injuriously interfere with or affect the navigation of the river or bay, was properly overruled."

In the case of White vs. Crisp (10 Exch. 312, 26 Eng. L. & Eq. 582) one of the pleas stated that the wreck was lying in a part of a navigable channel, *which was not ordinarily passed over by boats,* except during stress of weather, and the plea was held to be bad, and the defendant held liable for injuries resulting from allowing his sunken vessel to remain in that place, without taking proper care to prevent damage, and without placing a buoy to give notice where the vessel lay.

3. The right of the public to use every part of a navigable river is the same as the right of the public to use every part of a public street. In fact, this right should be more liberally construed in the case of a navigable river, for travel and transportation are more difficult and dangerous on water than on land.

In the case of the People vs. Cunningham (1 Denio p. 524) it was held that while a person may *temporarily* occupy a portion of a public street while engaged in building or in receiving and delivering goods, he cannot permanently occupy any portion of the street though for the purpose of carrying on a lawful business.—Here, again, the same defense, of necessity in carrying on business was raised, but the court decide against it and refer to the case of The King vs. Russell (6 East, 427), in which the court say "That if the nature of the defendants' business were such as to require the loading and unloading of so many more wagons than could be conveniently contained within his own private premises, *he must either enlarge his premises or remove his business to some more convenient spot.*"

In the case of Dickey vs. Maine Telegraph Co., (46 Me. 483) it was decided that "after the laying out of a highway, the public acquire an easement over *every portion* of the road as laid out, and

no private person or corporation has a right so to obstruct even *the untraveled part* as to prevent the public from traveling over it.

In the case of Inhabitants of Stoughton vs. Porter, (13 Allen 191), the defendant was held liable for damages resulting from his using and maintaining two small sticks of timber within the limits of the highway, *although they did not reach the traveled part of it.*

We also refer the Court to the following cases and authorities:

32 Iowa, p. 106.

2d Eden on Injunctions, Vol. 2, Ch. 11, p. 261, note 2, and page 262 note.

31 Pa., p. 37.

Dillon on Municipal Corporations, Secs 70, 311, 581, notes and cases cited.

23 Howard, p. 209.

And to the decision of the Judge of the Circuit Conrt, which is attached to the original record in this case.

4. The case of wharves and docks constructed in cities has been referred to, as being analagous to the case at bar. But we submit that there is very little analogy between them.

In the first place, they are built in *aid of navigation*, for they furnish landing places and places for the loading and unloading of boats and vessels, and are *indispensable* for these purposes. Boats and vessels must be loaded and unloaded at cities and marts of commerce, from and to which they perform their voyages, and where ocean, lake, and river commerce is carried on, and there must be access to the navigable portion of the water. In the second place, in

cities, where wharves and docks have been built into the navigable part of the water at all, it has been done under legislative grant or authority. Otherwise, they are there by sufferance and not by right.

The legislatures of the States have often, and perhaps generally, conferred upon cities jurisdiction over wharves, docks, &c. Under this power, cities have either themselves constructed wharves and docks, or authorized others to do so, and have exercised jurisdiction for the purpose of making and straightening wharf and dock lines, and for other purposes connected with navigation. We think it will be found that wherever these acts have been exercised, it has been under this legislative authority, and that cities, *as such*, have not claimed this right. The cases from the New York reports, cited above, are of this description. See also Dillon on Municipal Corporations, Sec's 67 to 75.

5. The case of railroad bridges has also been referred to by the Judge of the District Court. But these cases furnish less analogy, if possible, than those of wharves and docks, for it is clear that no one has the right to construct a bridge over a navigable stream without legislative authority.

These bridges are erected for a *public purpose* and produce a *public benefit*. They answer a similar purpose to that of the river, for they are built for purposes of travel and transportation. Although owned by private persons or corporations, they constitute a kind of highway, and every one has a right to use them in the mode provided, for purposes of travel and transportation, on paying the usual compensation. They form parts of great channels of trade through which a vast commerce flows, greater often than that of the river. Railroads produce as great if not greater

public benefits than navigation, and have become the most powerful instruments of commerce.

Authority to build the bridges is unquestionably given for the reason that they are built for the accommodation of the public—the same public who have the right to the use of the river. Otherwise, no such obstructions would be tolerated.

The benefit derived from these bridges is greater than the detriment which they occasion to the interests of navigation, great and important as these interests are. But even under these circumstances, they are not allowed to *materially* obstruct the navigation of the river.

These cases therefore furnish no analogy to the case of respondent.

1st. There is no legislative authority or permission to construct the pier.

2d. The *purpose* and *object* for which it was constructed are entirely different from the purpose and object for which a railroad bridge is constructed, and the use made of it.

3d. The relation which the pier sustains to commerce bears no comparison to that of a railroad bridge.

If the rule that a riparian proprietor may use whatever portion of the navigable channel of a river he pleases, provided he leaves a reasonable space for the passage of boats, shall prevail, it is evident that the public will have very little security against losses and injuries. *What is a reasonable space for the passage of boats?* This is a very difficult question, and the mill owners will judge for themselves. Some will say three hundred feet and some perhaps

one hundred feet. It is very certain that they will claim that they are not bound to leave a wider space than the space between the piers of these railroad bridges. They will be sure to claim the same rights and privileges that the owners of these bridges have. And if the same principle is to be applied to both, what answer can be made to this claim? The result would be that this privilege would be greatly abused, and the river blockaded with mill piers.

We claim that the current of authorities is against permitting any obstructions in the navigable waters of a river, and that in those cases in which they have been allowed, the legislature has exercised its judgment in regard to the propriety of the erections and has directly authorized them, and that they have been either in aid of navigation, or, as in the case of railroad bridges, have been constructed to serve a similar purpose—the public purpose of travel and transportation.

The respondent presents no such case to this Court. And we submit that this river has already been sufficiently obstructed to the great injury of the interests of navigation. To erect the bridges, it was necessary to obstruct the navigation of the river in a greater or less degree, but the respondent could have built his pier where he would not have obstructed it at all.

This river is a natural thoroughfare, and the right of free navigation upon it has been recognized by treaties, acts of congress, and by the courts. And we submit, in conclusion, that this right cannot be too carefully guarded and protected.

H. SCOTT HOWELL,
J. L. RICE,
J. H. DAVIDSON,
Counsel for Appellee.

We omitted to notice in the foregoing argument an act passed at the last session of Congress for the protection of owners of saw mills on the Mississippi river. It is as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the owners of saw mills on the Mississippi river be, and they hereby are, authorized and empowered, under the direction of the Secretary of War, to construct or build piers or cribs in front of their mill property on the banks of said river, for the protection of their mills and rafts against damage by floods and ice; *Provided, however*, That the piers or cribs so constructed shall not interfere with or obstruct the navigation of said river. *Provided further*, That in case by reason of the shifting of the channel of the said river, or from any other cause, the piers or cribs, the construction of which are authorized by this act, shall be found to obstruct the navigation of said river, at any time, the government expressly reserves the right to remove or direct the removal of any such piers or cribs at the cost and expense of the owners thereof."

Approved March 3, 1873.

See acts of 3d Session of 42d Congress, p. 244.

In regard to this act we submit the following points:

1. The act shows the jurisdiction which Congress exercises over the navigation of the Mississippi river, and is a legislative interpretation of the law *against* the right of individuals to obstruct it. The act declares that the piers or cribs constructed under the power granted therein "shall not interfere with or obstruct the navigation of the river." It does not say the navigable channel or the *ordinary* navigable channel, but the *navigation* of the river. The power granted is not given with the qualification that the

piers or cribs shall not *materially* obstruct the navigation of the river, but is that they shall not even "*interfere*" with it. It is a clear prohibition against obstructing it at all, and is a recognition of the common law rule which we contend for.

2. The act does not give the mill owners a permanent or absolute right to construct and maintain the piers or cribs, for the 2d proviso provides that if from the shifting of the channel of the river, or *from any other cause*, the piers or cribs shall be found to obstruct the navigation of the river, *at any time*, the government reserves the right to remove or direct the removal of them at the cost and expense of the owners.

3. The act clearly shows that Congress, whatever privileges it may grant in the case of railroad bridges, does not authorize *any* interference with or obstruction of the navigation of the river in the case of *mill piers*. The very limited privileges granted by the act to the mill owners, shows that in the judgment of the law making power they are not entitled to the same privileges granted to the owners of the railroad bridges. It recognizes the wide distinction existing between these cases.

4. The right to construct the piers or cribs is to be exercised by the owners of the mills under the direction of the Secretary of War, an officer of the government, and they are not allowed to decide for themselves where the piers or cribs shall be built.

5. They are only allowed to build their piers on the *banks* of the river, for the protection of their mills and rafts against damage by *floods* and *ice*. The act was passed at the instance of the mill owners, and for their protection, and shows just what privi-

leges Congress considers they are entitled to. It also shows the great care which Congress exercises to prevent obstructions to the free navigation of the river.

6. If the act had been passed before the loss occurred which gave rise to this suit, it would have furnished no protection to respondent for reasons which appear in the foregoing argument.

Respectfully submitted,

H. SCOTT HOWELL,
J. L. RICE,
J. H. DAVIDSON,
for Appellee.

Supreme Court of the United States.

OCTOBER TERM, 1873.

SAMUEL ATLEE, *Appellant.*

vs.

THE NORTH WESTERN UNION PACKET COMPANY.

No. 600.

REARGUMENT FOR APPELLEE.

The court having made the following order;

"Ordered by the court that this cause be re-argued on the question whether the damages shall be apportioned, both parties being in fault:"

We submit the following suggestions on this question, in answer to the argument of counsel for appellant.

On this subject of re-hearing of cases in this court, we have two decisions, to-wit, in 14 Howard 25, and 9 Wall 603. In the first the case of Brown *et. al.* vs. Aspelen *et. al.*, the court says:

"But the *rule* of the court is this: That no re-argument will be heard in any case after judgment is entered, unless some member of the court, who concurred in the judgment, afterwards doubts the correctness of his opinion, and desires a *further argument* on the subject. And when that happens, the court will, of its own accord apprise the counsel of its wishes, and designate the points on which it desires *to hear them.*"

In the latter, the case of the *Public Schools vs. Walker*, the court added this to the said rule, "Where the court does not on its own motion, order a re-hearing, it will be proper for counsel to submit without argument, a brief, written or printed petition, or suggestion of the point or points, thought important. If upon such petition or suggestion, any judge who concurred in the decision thinks proper to move for a re-hearing, the motion will be considered. If not so moved, the re-hearing will be denied as of course." And again in same case,

* * "No re-argument will be granted in any case unless a member of the court *who concurred* in the judgment desires it."

Of course we take it that some member of the court who originally tried this case, and who voted in affirmation of the judgment of the Circuit Court, "Afterwards doubted the correctness of *his* opinion, and desired a further argument on the subject," and that as the respondent filed his printed petition for a re-hearing, the court "considered" the same, and made the above quoted order.

But we entirely differ with counsel for respondent, as to the meaning, and proper interpretation of that order. On pages 3 and 4 of his printed re-argument, he says: "My object now is not simply to show that both parties were in fault—*for that is settled*—but to show that the pilot and officers of the Phil Sheridan were chiefly to blame, and that but for their palpable negligence the accident could not have happened."

When and where was "it settled" that both parties were in fault? The only decision which "settled" that question, was made by Judge Dillon, and that settled it the other way. He said:—"In my opinion the fault lies *wholly* with the respondent." The only *judgment* entered in this court was one of affirmance of Judge Dillon's, by virtue of an equally divided court, with no

opinion filed, which left that question *as settled by the circuit court.*

We respectfully submit that this court would not "thereafter" undertake to "settle" that question in a directly opposite manner, on a mere motion or petition, and without further argument. The petition is both *ex-parte* and *ex-gratia, for* a re-hearing *only*—to be "without argument;" and simply that parties may be permitted to re-argue it in the future, and then after all this, the court will only "consider" it, provided some judge of the bench desires it.—"And when that happens, the court *will*, of its own accord, *apprise the counsel* of its wishes and designate the points on which it desires to hear them."

It is evident that there is but one chief question in this case, and that is "whether the damages shall be apportioned." This necessarily involves the other, to-wit, whether "both parties are in fault" or not. The District Judge divided the damages, because he found both parties were in fault, and the libellant appealed.—The Circuit Judge gave libellant full damages because he found the fault was "*wholly* with the respondent," and respondent appealed, and this court had necessarily to affirm the Circuit Judge, because of an equally divided bench.

There is no suggestion from any quarter that as, since the case was affirmed by this court, by an equally divided bench, a new Chief Justice has come upon the bench, and that he has alone, or with the other members of the court, examined the whole case; and with a majority of the court found both parties were in fault. We do not believe this has been done. We do not think that the newly constituted court would go back and take up a case decided and disposed of, and without notice to counsel, or a re-argument reverse it, and we submit it would be contrary to the rules of the Court to do so.

We do not think the court *has*, or has intended to decide in the order made for a re-argument that both parties were in fault.

Note the words " * * the question whether the damages shall be *apportioned* * * ." It is not whether libellant shall, or shall not, have any damages. It concedes respondent should pay some damages. But the amount of damages is the question. Now how is this court to determine the quantum of damages, without considering *how much* at fault each party was? For even if you regard the last words of the order, to wit: "both parties being in fault," as important, yet they do *not* state the *relative proportion of blame* attached to each party. A matter which the authorities hereinafter cited hold must be duly considered by the court, although both parties be partly derelict.

We think then that whether both parties are in fault, and if so, how much is each in fault, are open questions necessarily involved in "the question" whether the "damages shall be apportioned," and shall now proceed to consider the same.

We contend that the act committed by respondent is a "marine tort" of such a character that the damages should not be apportioned, but that he should be held liable to the full extent of the injuries suffered by libellant.

The rule in admiralty, in cases of collision, is well settled that where both parties are in fault, *and where the fault is not "vastly greater on one side than the other,"* the damages will be equally divided. But we claim that in a case like the present, where one of the parties is guilty of a willful obstruction of a navigable stream, and the other has suffered special damage therefrom, having had no previous knowledge of the obstruction, the damages will, not, in admiralty, be equally divided or apportioned, but that

the injured party will be held entitled to recover to the full extent of his injuries.

1

This is a case of "marine tort" within the admiralty jurisdiction, and having its remedy in the admiralty courts.

The Phil. Wil. & Balt. R. Co. *vs.* Phil. & Havre de Grace Steam Tow boat Co., 23 How, 209.

2 Parsons on Shipping & Admiralty. p. 165, 347.

The cases cited by counsel on the first page of his argument, in regard to the rule of damages *in the common law courts*, do not therefore apply.

This case has been argued by counsel as though it were one of "collision," and the admiralty cases cited by him are cases growing out of collisions between vessels.

This is not a case of "collision" under the maritime law. A collision is defined in Bouvier's Law Dictionary as taking place "when two ships or other vessels run foul of each other, or when one runs foul of the other."

These cases of collisions relate to the observance or non-observance of the rules of navigation, such as the relative duties of steam and sailing vessels, of vessels when meeting, of lights, signals, and other similar matters. In all these cases, the vessels, whether in motion or at anchor, were *rightfully within navigable water*, and were engaged in lawful commerce. There is, therefore, a broad distinction existing between this class of cases, and the case of an unlawful obstruction in a navigable river.

We do not, however, understand the rule in admiralty, even in cases of collision, where both parties are in fault, to be inflexible, that the damages shall be equally divided between the parties.

We do not think the court *has*, or has intended to decide in the order made for a re-argument that both parties were in fault.

Note the words " * * the question whether the damages shall be *apportioned* * * ." It is not whether libellant shall, or shall not, have any damages. It concedes respondent should pay some damages. But the amount of damages is the question. Now how is this court to determine the quantum of damages, without considering *how much* at fault each party was? For even if you regard the last words of the order, to-wit: "both parties being in fault," as important, yet they do *not* state the *relative proportion of blame* attached to each party. A matter which the authorities hereinafter cited hold must be duly considered by the court, although both parties be partly derelict.

We think then that whether both parties are in fault, and if so, how much is each in fault, are open questions necessarily involved in "the question" whether the "damages shall be apportioned," and shall now proceed to consider the same.

We contend that the act committed by respondent is a "marine tort" of such a character that the damages should not be apportioned, but that he should be held liable to the full extent of the injuries suffered by libellant.

The rule in admiralty, in cases of collision, is well settled that where both parties are in fault, *and where the fault is not "vastly greater on one side than the other,"* the damages will be equally divided. But we claim that in a case like the present, where one of the parties is guilty of a willful obstruction of a navigable stream, and the other has suffered special damage therefrom, having had no previous knowledge of the obstruction, the damages will, not, in admiralty, be equally divided or apportioned, but that

the injured party will be held entitled to recover to the full extent of his injuries.

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Prof. Parsons, in commenting on this rule, as to the equal division of the damages, says: "Still the equity power of the court of admiralty might qualify this rule, *where the fault was vastly greater on one side than the other.*"

1 Parsons on Shipping & Admiralty, p. 527.

The rule of damages in these cases, where both parties are in fault, was first considered in this court in the case of the *Schooner Catherine vs. Dickinson.* (17 How, 173). In this case, Mr. Justice Nelson, who delivered the opinion of the Court, remarked: "Under the circumstances *usually* attending these disasters (collisions)we think the rule dividing the loss the most just and equitable." The reason of the rule seems to be that in these cases of "*collisions*" where both parties are in fault, the fault is usually about equal on each side. Hence the general rule which the Court applies to these cases.

We have found no case in which the damages have been divided where the negligence and malfeasance of one of the parties were of the same character and degree as that of the respondent in this case. The distinction between a case of collision occurring between two boats each *rightfully* in the navigable channel, and the case of an injury caused by placing a *permanent* and an *unlawful* obstruction in it, is so marked as to require, it seems to us, a different rule of damages.

The tort in this case consisted in the exclusive appropriation by respondent to his own private use of a portion of the navigable channel of the Mississippi river, by placing therein a permanent obstruction to navigation. This act of respondent was not a mere fault, or "mere negligence," but was a willful trespass, and the obstruction a nuisance.

The People vs. Vanderbilt, 28 N. York, (1 Tiffany,) p. 396.

Sherman and Redfield on Negligence, Sections 343, 582.

The rule in regard to the apportionment of damages, in cases of collisions between vessels has never, we believe, been applied to this class of marine torts, but the guilty party has always been held liable for all the consequences of his wrongful act.

In the case cited above from 23 Howard, p. 209, the respondent was held liable for leaving certain sight piles in the Susquehanna river, cut off a few feet below the surface of the water, and it appears from the decision in that case that persons placing obstructions in navigable rivers have from the earliest times been held responsible for injuries resulting therefrom.

And in Parsons on Shipping and Admiralty, vol. 1, p. 546, the author, while speaking of the duties of owners of sunken vessels, says, "In the previous cases, the obstructions were caused without any fault or negligence on the part of the owners of the vessels.—*If, however, a person wrongfully obstructs a navigable stream, he is liable for the consequences.*"

See pages 546, 547, notes and cases cited.

White vs. Crisp, 26 Eng. Law and Eq. R. p. 535.

In this last case, Alderson, B. said, "We are clearly of the opinion that the third plea is bad. It does not deny that the Wreck lay in a navigable part of the channel, *and whether that part be more or less used, seems to us a mere question of degree, and unimportant to plaintiff's right of action.*

And Judge Dillon of the Circuit Court in his decision in this case said, "In my opinion the fault lies wholly with the respondent. *This is clearly so if the pier on which the boat was injured was not lawfully there.*"

This case being in admiralty, it is not necessary to consider the cases cited by counsel from the common law reports in regard to "contributory negligence." It may be remarked, however, that even

if this were a case at common law, the doctrine of contributory negligence would not apply. That doctrine could not be carried so far as to hold that because rafts had been moored at certain seasons of the year in the vicinity of the pier, the act of the libellant in not navigating its boat further out in the stream was such negligence as to be considered the proximate cause of the injury, when the accident was not caused by a raft but by the obstruction built by respondent, of which the libellant had no knowledge, and when the libellant had a clear right to use any part of the public channel. The pilot of the Sheridan had the right to assume that there was no such obstruction as the pier in the river, and, of course cannot be held responsible for not anticipating such a wrongful and illegal act. In Sherman and Redfield on Negligence p. 30, it is said, "As there is a natural presumption that every one will act with due care, it cannot be imputed to the plaintiff as negligence that he did not anticipate culpable negligence on the part of the defendant."

2

The fault of the libellant, as compared with the wrongful act of the respondent in building an unlawful obstruction which endangers at all times the lives and property of those who navigate the river, was so slight, that libellant should not be held responsible for any part of the injuries. "The fault was vastly greater on one side than the other."

The only fault that has been imputed to libellant, is, that as rafts had been kept at certain seasons of the year, at or near the place where the pier stands, the pilot of the Sheridan had reason to expect that he would find the channel obstructed with rafts and should therefore have navigated his boat further out in the stream.

On this subject we submit to the court the following facts:

1. The accident occurred in early spring before respondent was in the habit of bringing his logs down to his mill. (Deposition of John Scott, printed transcript, page 219.) As stated by Judge Dillon, in his decision, "It was at a season of the year when usually there were no rafts moored in the stream."

2. There was no raft there at the time of the accident. This is shown by respondent's own witnesses.

3. The accident was not caused by a raft or any such obstruction, and if a raft had been there, it would not have produced the injury.

4. We claim that respondent never did keep his rafts *at the point where the pier stands.* We are aware that there is some confusion in the testimony of the witnesses on this point, but we think a careful examination of the testimony will show that he kept them above the pier, under the gravel bar. This is proved by witness A. A. Scott, who was in respondents' employ at the mill, and who says, "Before upper pier was built, Atlee moored his rafts right under the reef of that gravelly bar." And respondent's own witness, P. Cowles, who was his superintendent at the mill, says, "He (respondent) does not usually keep any logs between the pier and the mill; the logs are kept above the pier, just below the bar," and that "it is most of the time open water" between the pier and the mill. See pages 29 to 32 of our former argument.

5. The Sheridan having been over 120 feet from the shore when the accident occurred, would have been outside the usual line of rafts, even if rafts had been kept there.

6. When respondent had rafts near his mill, he generally kept lights on them at night, and the pilot had therefore the right to

assume, in the absence of a light, that there was no raft there that night.

We also ask the attention of the court to the following additional facts as bearing on the question of fault on the part of the pilot:

1. The water where the pier stands is twelve feet deep at low water, (printed transcript, p. 247) and therefore navigable at all times, and when the accident occurred, it was twenty feet deep. (See page 19 of our former argument).

2. The pilot of the Sheridan and many other pilots, before the pier was built, had often navigated their boats over the very spot where the pier stands, even at low water, and also inside of the pier. (See page 7 of our former argument where a reference to the testimony is given). *Since* the pier was built, boats of course keep further out in the stream. But the testimony shows that even since its erection, boats run within from five to fifty feet of the pier, and often barely escape it, owing to the peculiar dangers of navigation in that locality. (Transcript p. 121, and testimony on pages **11**, 12, **13**, 14, 15 of our former argument).

3. The pier was constructed in the winter of 1870,–71.
Deposition of James Ruby, transcript p. 108.
" M. A. Pendon, " 245.

The accident occurred on the night of April 23, 1871, when the first navigation season after the erection of the pier had just opened, and when the Sheridan was making her first trip of that season.

Counsel for respondent has stated in his argument that the pier was built "several years" before the accident occurred, but this is an error, as respondent's own testimony shows. The pilot had therefore no opportunity of learning of the existence of the pier, and it is fully proved, and not denied, that he did not know of it.

4. When the accident occurred the river was high, and there was, therefore, no necessity, so far as the depth of water was concerned, for the pilot to keep further out in the stream.

5. The channel is wide at that point, but the testimony shows that pilots have *not* been in the habit of using the eastern side of it, but *do* use either from necessity or choice, the western side, where the pier lies. Respondents' own witnesses vary as to the distance that boats run from the shore since the pier was erected some placing it at 75 feet from the pier, and some further out.—Our pilot witnesses place it nearer the pier. There can be no doubt therefore that the Sheridan, when the accident occurred, was within the usual route of boats before the erection of the pier.—It is immaterial where the route of boats is since the erection of the pier, as the pilot did not know that it had been constructed, and was not therefore influenced by it in taking his course.

6. The barge being at the time of the accident, over 120 feet from the shore, was at a safe distance from it under any circumstances. We do not know of any rule which requires pilots to keep their boats in the center of the stream, especially in places where boats pass only occasionally, and where there is no danger of collision with boats at anchor, and in a river like the Mississippi, where the channel and the usual route of boats is often close to the shore.

From what we have said it appears that the pilot, if he took the course he did intentionally, may have done so, without supposing he was running any risk of accident, or that he was guilty of any negligence. But the circumstances under which he was navigating his boat may have prevented his proceeding further out in the stream. The testimony shows that he had just left the landing at Ft. Madison; that the night was dark; dark enough for

a lantern, (transcript p. 147); that the Sheridan had a barge in tow on the starboard side, the effect of which was to draw her in towards the pier; that the shore is of a crescent shape, and that the tendency of the current (increased in strength and volume by the high water) is, at that point, to carry boats into the bend of the river. Under these circumstances, it would probably have been impossible for the pilot to reach and keep the center of the channel.

We submit that, under the circumstances above stated, the pilot should be held to have been very slightly in fault, at most, for not keeping his boat further out in the stream. If he took the course he did intentionally, it was a mere error in judgment. If circumstances compelled him to take it, he was certainly not in fault.—Shall respondent be permitted to escape the consequences of his own wrongful act by alleging that the Sheridan was in fault for not taking a different course, when it is certain no accident would have happened but for the unauthorized and unlawful obstruction which he placed in the river, and when the pilot had no knowledge of the obstruction?

We wish to notice in this connection one or two statements made by counsel:

1st. It is alleged that "at the time of the collision the vessel was entirely out of the ordinary channel;" and in proof of this statement, the testimony of several witnesses is referred to. Of these witnesses only five were or ever had been pilots, and of these five, three were raft pilots.

We refer the court, for the opposite, and as we claim the correct view, to the testimony of the following witnesses, most of whom are pilots of large boats:

Deposition of	E. V. Holcomb,	printed transcript, p.	33, 34
"	C. B. Goll,	"	44, 45
"	J. A. Patten,	"	69
"	Thos. Douglas,	"	84, 85, 87
"	O. L. West,	"	92, 93
"	D. Leclaire,	"	94, 95
"	A. Wempner,	"	96
"	C. Band,	"	98
"	U. Brock,	"	101, 102
"	Jas. Ruby,	"	108, 109
"	O. M. Ruby,	"	113
"	H. G. Carson,	"	116, 117, 121
"	John Griggs,	"	122, 123
"	H. C. Gillaspie,	"	139
"	R. B. Hatch,	"	142
"	W. R. Slocumb,	"	145, 147
"	M. A. Pendon,	"	245, 246

This testimony clearly shows that the pier stands in the western side of the channel, where boats were in the habit of running before the pier was built. Judge Dillon, of the Circuit Court, decided that the evidence establishes the pier "to be within the navigable channel of the river at its lowest stage." And Judge Love, of the District Court, did not hold to the contrary, but decided the case on another point Counsel do not deny that the pier was built far below the "line of navigability," and, consequently where respondent had no right to build it according to the decision of this court in the case of Dutton vs. Strong, 1 Black, p. 1.

Counsel has also called the attention of the court to the maps offered by him in evidence.

We have to say in regard to these maps that the surveys rep-

resented by them, and the maps themselves, were made for respondent when the river was at an extremely low stage, and near low water mark.

Deposition of R. H. Heath, transcript p. 212
" E. H. Worrall, " 250

Whereas, when the accident occurred, the river was at a high stage. The maps do not, therefore, correctly represent the shore as it was at the time of the accident. The gravel bar, which lies 750 feet above the pier, and which is made to appear so prominent on these maps, was, at that time, covered with water from six to eight feet deep, and the Sheridan could easily have passed over any part of it. (See pages 19, 20, 21, 22, of our former argument.)

2d. It is also stated or intimated by counsel that the pilot of the Sheridan was steering towards shore, when the barge struck the pier.

There is no testimony to this effect, and the manner in which the accident occurred, shows that such was not the case. The watchman or lookout, F. Heisel, says, (transcript p. 37) that he was on the bow of the Sheridan when the accident occurred, and that "it was the fore quarter or little forward of midships, that the barge struck." (See also deposition of J. A. Patten, transcript p. 67). The boat was going down stream with the barge on the starboard side, and it was the upper outside corner of the pier that the barge struck, which shows that the boat could not have been headed towards shore, but, on the other hand, was either proceeding parallel with the shore, or was headed towards the center of the stream.

The admiralty cases cited by counsel in order to show that the

pilot of the Sheridan was guilty of "negligence" can furnish no rule for the decision of a case like the one at bar.

In the first place, the cases referred to are all cases of "collision" between vessels, and are governed by a law of their own.

In the second place, the collisions took place either in ports or harbors, or places where boats were constantly passing, and where great care and caution were necessary; or in sheltered places, outside of the path of vessels, where the injured boats were lying at anchor, and where the colliding boats, under the circumstances, had no right to go.

1. Ure. vs. Coffman *et. al.*, 19 How 56.

This was a case of collision between a steamer and a flat boat, and is distinguished from the present case in the following particulars: 1st. The flat boat was moored in a *recess* of the shore, and was "out of the line of customary and safe navigation" 2d. The place where the flat boat was moored was at a point of the river where boats were customarily moored at night as a place of safety against collisions, and both the pilot and captain of the colliding boat knew this. 3d. The steamer was out of her proper course and was running directly towards the bank when the collision took place.

In the present case, the pier, at the stage of water which prevailed when the accident occurred, was over 120 feet from the shore, in a part of the channel where the pilot of the Sheridan and other pilots had often run before, both at high and low water, and the pilot had no knowledge of the obstruction.

2. Rogers *et. al.* vs. Steamer St. Charles, *et. al.*, 19 How. 108. The steamer St. Charles, while running at the rate of from nine to ten miles an hour, ran into the schooner Ella, while at anchor

in a place much frequented as a harbor. The court held that the schooner was in fault for not having a light, and that the steamer was also in fault for not slackening her speed, *inasmuch as the schooner was in a place much frequented as a harbor, of which the steamer was chargeable with knowledge.*

Although the schooner was rightfully in the place where she was lying at anchor, the court held that she was in fault for not having a light, and the steamer was held to be in fault for moving at too great a rate of speed in that locality. The damages were divided.

3. The New York and Va. Steamship Co., vs. Calderwood *et. al.*, 19 How. 241. This was also a case of collision between a steamer and a schooner. The collision occurred "out of the ship channel," "near an edge of shoals." The steamer had notice that the schooner was before her and near her track. The court held that, under the circumstances, the steamer was bound to take efficient means to avoid the schooner, and not having done so, she was held liable.

4. *The Granite State,* 3 Wall. 310. The collision in this case was between a steamer and a barge in the port of New York. The barge was fast at a wharf in a place she was entitled to occupy.—The steamer was held to be without excuse and responsible for the collision, because she had the power to move or stop at pleasure, and was not compelled by any superior force to the place of collision, and because the barge was "in a place she was entitled to occupy."

5. The Bridgeport, 14 Wall, 116. In this case the injured vessel was lying in a *recess* at the end of a wharf, 200 *feet outside of the open channel.* The steamer was held to be in fault for colliding with her while at anchor so far from the open channel.

The cases cited by counsel from 6 Wallace, p. 225 and 9 Wallace, p. p. 522, 630, 634, were cases of collision between vessels in motion, two of them being in a "crowded harbor." The questions involved relate to the relative duties of the boats and the rules of navigation. We are unable to see what bearing they have on this case. The other cases from Sprague's Decisions and Blatchford's Reports we have not been able to obtain, but it appears from the statement of the cases, that they are all cases of collision, and do not differ materially from the other cases cited by counsel.

4

Respondent was guilty of two-fold negligence. 1st.—In building a permanent obstruction in a navigable river, as we have seen, and 2d—In not placing a light on it to give notice and warning to passing vessels.

Even if he had the right to build his pier where he did, it would still be his duty to keep a light on it at night, until persons navigating the river should have an opportunity to learn of its existence.

It is a general rule that notice must be given of all recent obstructions in navigable streams. It has often been held that where vessels are sunk in a navigable river, notice must be given to the public by placing a buoy over them.

1 Parsons on Shipping and Admiralty, p. 546, note 4.

We will briefly repeat the facts.

1st. The pier was constructed in the winter of 1870–'71.

2d. The accident occurred on the night of April 23, 1871, at the opening of the next navigation season, after the erection of the pier.

3d. The Sheridan was on her first trip of that season.

4th. The "through" boats, that is boats running between St. Louis and St. Paul, of which the Sheridan was one, commenced making their trips in the month of April of that year.

5. The night was dark.

Can there be any doubt, under these circumstances, that the respondent was guilty of gross negligence in not having a light on his pier that night? Respondent should not be permitted to say that the pilot was in fault for not navigating his boat further out in the stream, since it is certain that he would have done so, if possible, if respondent had performed his duty in giving notice of the obstruction by placing a light upon it.

Apart from any express rule of navigation, whether vessels should carry lights or not, depends upon the circumstances of each case. The question resolves itself into one of negligence. If prudence requires the vessel to carry a light, she will be held responsible, if injury results from her having failed to do so. 1 Parsons on Shipping and Admiralty, p. 549, note 4, and the numerous cases therein cited. But whatever may be the maritime law or the rules of navigation in regard to the duty of *vessels*, whether in motion or at anchor, to carry lights, it is clear that it was negligence on the part of respondent, under the circumstances above stated, not to have had a light on the pier.

Respectfully submitted,

H. SCOTT HOWELL,
J. L. RICE,
J. H. DAVIDSON.